

No. 14714

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**In the United States Court of Appeals  
for the Ninth Circuit**

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UNITED STATES OF AMERICA, APPELLANT

*v.*

AHTANUM IRRIGATION DISTRICT, A CORPORATION, ET AL.,  
APPELLEES

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*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF WASHINGTON, SOUTHERN  
DIVISION*

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**BRIEF FOR THE APPELLANT**

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**FILED**

**DEC 22 1955**

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BRIEF FOR THE UNITED STATES OF AMERICA, APPELLANT

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## OPINION BELOW

The trial court entered its opinion on March 7, 1953, which was amended and supplemented by an opinion dated January 18, 1954, but which was not entered until May 4, 1954.<sup>1</sup>

## JURISDICTION

The jurisdiction of the United States District Court for the Eastern District of Washington, Southern Division, was invoked by the United States of America pursuant to the act which provides that:

“\* \* \* the district courts shall have original jurisdiction of all civil actions, suits or proceedings

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<sup>1</sup> *United States v. Ahtanum Irrigation District, et al.*, 124 F. Supp. 818 (U. S. D. C. E. D. Wash. S. D. 1954).

commenced by the United States \* \* \*.”<sup>2</sup> Jurisdiction to review the judgment below has been conferred upon this court by Congress.<sup>3</sup>

**THE TREATY, CONSTITUTIONAL PROVISIONS AND STATUTES  
WHICH ARE INVOLVED**

The Treaty of June 9, 1855, between the United States of America and the Yakima Tribe of Indians is before this Court for construction.<sup>4</sup>

There is presented for determination the breadth of application of the Constitutional proviso that the Congress shall have the power “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”<sup>5</sup>

The Enabling Act for the State of Washington and the Constitution of the State of Washington, both of which provide that the “Indian lands [which include those here involved] shall remain under the absolute jurisdiction and control of the Congress of the United States, \* \* \*,”<sup>6</sup> are before this Court for interpretation.

The Acts of 1866, 1870,<sup>7</sup> and the Desert Land Act of 1877<sup>8</sup> providing for appropriation of rights to the use of water on “public” lands are directly involved in this cause.

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<sup>2</sup> 28 U. S. C. 1345.

<sup>3</sup> 28 U. S. C. 1291.

<sup>4</sup> 12 Stat. 951, 11 Kapler 698; The Text of the Treaty is set forth R. 16, Exhibit A of the complaint.

<sup>5</sup> Constitution of the United States, Article I, Section 8, Clause 3.

<sup>6</sup> Enabling Act, Section 4, Section subdivision 25 Stat. 676; Constitution of the State of Washington, Article XXVI, Second subdivision.

<sup>7</sup> 43 U. S. C. 661.

<sup>8</sup> 43 U. S. C. 321.

Likewise involved is the Federal Declaratory Judgment Act.<sup>9</sup>

#### FACTS

Important in regard to the facts of this case is the Pre-trial Order containing admissions of the respective parties,<sup>10</sup> the stipulation pursuant to which the exhibits of the United States of America were admitted in evidence without objection,<sup>11</sup> and the general agreement among the parties respecting the salient issues involved.<sup>12</sup>

As revealed by the complaint,<sup>13</sup> this litigation pertains to:

(a) A controversy between the United States of America, plaintiff-appellant, representing the Yakima Tribe of Indians, and Ahtanum Irrigation District, together with individual claimants, defendants-appellees, over rights to the use of water from Ahtanum Creek, a tributary of the Yakima River in the State of Washington;

(b) The validity of an alleged agreement purporting to give to the water users within the Ahtanum Irrigation District 75% of the flow of Ahtanum Creek, and 25% of that flow to the Yakima Tribe of Indians.

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<sup>9</sup> 28 U. S. C. 2201.

<sup>10</sup> R. 123, et seq., Pre-trial Order.

<sup>11</sup> R. 99.

<sup>12</sup> Respecting the exhibits admitted into the record without objection reference is made to the fact that the list of those exhibits set forth in the Pre-trial Order was omitted from the Record in printing. Similarly omitted from the printed Record are exhibits to the Pre-trial Order, A and B. The Pre-trial Order exhibits A and B are Appendices A and B of this brief. The Pre-trial Order list of exhibits is Appendix C of this brief.

<sup>13</sup> R. 3 et seq.

On the basis of those introductory comments, the facts giving rise to this litigation will be reviewed.

**Ahtanum Creek:** "Ahtanum Creek is a nonnavigable stream, rising on the eastern slope of the Cascade Mountains in the State of Washington, flowing thence slightly north a distance of forty miles, emptying into the Yakima River about four miles south of the City of Yakima, Washington. Two forks of that stream unite to form the main channel of Ahtanum Creek eighteen miles above the point where it enters the Yakima River."<sup>14</sup>

**The Treaty of June 9, 1855:**<sup>15</sup> By the Treaty of 1855 the Yakima Indians reserved to themselves a large tract of land now in the State of Washington. That land was reserved by those Indians as "a home and abiding place." The balance of the lands previously occupied by them was ceded to the United States of America.

Ahtanum Creek is the northern boundary of the Yakima Indian Reservation.<sup>16</sup>

**Ahtanum Creek Valley is the Cradle of Irrigation in the State of Washington:** The lands here involved are arid in character; "\* \* \* to make these lands productive large quantities of water are required for the purpose of successfully and adequately irrigating

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<sup>14</sup> R. 124, Pre-trial Order, Agreed Facts, paragraph 3. See also United States of America, plaintiff's exhibits 5a, 5b—maps disclosing respectively Ahtanum Indian Irrigation system and Ownership, Development of Ahtanum Irrigation System.

<sup>15</sup> Set out in full R. 16 et seq.

<sup>16</sup> R. 123, Pre-trial Order, Agreed Facts, paragraph 1; Treaty, R. 17.

them.”<sup>17</sup> In 1847, prior to the Treaty of 1855, waters were being diverted from Ahtanum Creek to irrigate the arid lands bordering that stream.<sup>18</sup> In the words of Mr. John H. Lynch, an attorney for defendants, when reviewing the history of Ahtanum Valley, “Let it be said, however, that Ahtanum [Creek] was the cradle and proving ground of irrigation in the State of Washington; \* \* \*.”<sup>19</sup>

**The Ahtanum Indian Irrigation Project as Presently Constructed Was Completed in the Year 1915:**

As observed above, Ahtanum Creek was the cradle of irrigation in the State of Washington with waters being diverted from that stream for purposes of irrigation as early as 1847. In the years which followed, waters were diverted from Ahtanum Creek to irrigate not only the Indian lands but those lands lying north of the stream by the defendants or their predecessors in interest. In 1894 the United States of America commenced systematic aid to the Yakima Tribe of Indians for the irrigation of the lands here involved. Construction of the Ahtanum Indian Irrigation Project to its present size was initiated August 6, 1908, and the work of construction was completed in the year 1915.<sup>20</sup> Progress towards completion of the Ahtanum Irrigation system to its present size is graphically disclosed by maps which are part of the record

<sup>17</sup> R. 124, Pre-trial Order, Agreed Facts, paragraph 2.

<sup>18</sup> R. 124, Pre-trial Order, Agreed Facts, paragraph 4.

<sup>19</sup> R. 124. United States of America, plaintiff's Exhibit 12, Yakima Valley Catholic Centennial, the Beginning of Irrigation in the State of Washington.

<sup>20</sup> R. 124, Pre-trial Order, Agreed Facts, paragraph 4.



in this case.<sup>21</sup> There are presently 4,968 acres of land in the Yakima Indian Reservation which “is now or is susceptible of being served by the Ahtanum Indian Irrigation Project system as presently constructed and substantially completed in the year 1915.”<sup>22</sup>

**Description of Ahtanum Indian Irrigation Project, Its Structures, the Lands Serviced by It, the Duty of Water and the Quantities of Water Diverted to Irrigate those Lands:** It has been agreed among the parties that “The diversion duty for the lands in the Ahtanum Indian Irrigation Project is 4.4 acre-feet per irrigation season.”<sup>23</sup> Reference in that connection is made to the fact alluded to above, that there are 4,968 acres to be served by the irrigation system in question. The ditches diverting water to serve the Ahtanum Indian Irrigation Project are described with particularity in the Pre-trial Order.<sup>24</sup> These salient facts have likewise been agreed to by the parties: “Attached, marked ‘Exhibit A’ and by reference made a part of this Pre-Trial Order is a tabulation relating to lands located south of Ahtanum Creek in the Yakima Indian Reservation, disclosing (1) the allotment number, (2) names of ditches, (3) dates relating to initiation and history of increase of irrigation by allotments, (4) location of points of diversion, (5) total irrigated acreage (maximum), (6) description of irrigated acreage, (7) irrigable acreage (maximum), (8) description of irrigable acreage, and (9)

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<sup>21</sup> Please refer to United States of America, plaintiff’s Exhibit 5b; also 5a.

<sup>22</sup> R. 128, Pre-trial Order, Agreed Facts, paragraph 10.

<sup>23</sup> R. 125, Pre-trial Order, Agreed Facts, paragraph 5.

<sup>24</sup> R. 125, et seq., Pre-trial Order, Agreed Facts, paragraph 5.



comments.”<sup>25</sup> The data alluded to in the last quoted paragraph is contained in Appendix A of this brief.

Correlative with the date alluded to immediately above is the following, likewise agreed to among the parties: “The attached exhibit to this Pre-Trial Order marked ‘B’ reflects the stream flow records of the north fork of Ahtanum Creek, the south fork of Ahtanum Creek and the diversion records for the canals of the Ahtanum Indian Irrigation Project together with an analysis of those diversions.”<sup>26</sup> This data is set forth in Appendix B of this brief.

**Title to the Lands Within the Ahtanum Indian Irrigation Project:** It is admitted among the parties that: “The lands on the reservation side of Ahtanum Creek involved herein were allotted according to law and regulations to individual Indians.”<sup>27</sup> Those lands are part of the Yakima Indian Reservation which those Indians “reserved as a home and abiding place” when they conveyed to the United States of America by the Treaty of June 9, 1855, a much larger area.<sup>28</sup> Regarding the admissions as to title to those lands and the allotment of those lands all of which have been agreed to among the parties, reference is made to the evidence adduced by the United States of America upon which the admissions in question were predicated.<sup>29</sup>

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<sup>25</sup> R. 127, Pre-trial Order, Agreed Facts, paragraph 6.

<sup>26</sup> R. 129, Pre-trial Order, Agreed Facts, paragraph 12.

<sup>27</sup> R. 128, Pre-trial Order, Agreed Facts, paragraph 9.

<sup>28</sup> R. 123, Pre-trial Order, Agreed Facts, paragraph 1.

<sup>29</sup> United States of America, plaintiff’s Exhibit 1, et seq. United States of America, plaintiff’s Exhibit 2, et seq. United States of America, plaintiff’s Exhibit 3, et seq. United States of America, plaintiff’s Exhibits 4b, 4c, 4d.

**Ahtanum Creek's Yield Falls Far Short of the Demands of the Yakima Indians and the Defendants:** Included among the admissions in this proceeding is the following: "There are not sufficient waters in Ahtanum Creek to irrigate lands on both sides of said creek now being partially irrigated from that source."<sup>30</sup> Reference in that connection is also made to the agreement among the parties that, "The diversion duty for the lands in the Ahtanum Indian Irrigation Project is 4.4 acre-feet per irrigation season."<sup>31</sup> Relative to the shortage reference is made to this analysis elicited into the record without objection:

Q. Now, could you state the number of acre feet per year per acre, the average number of acre feet per year per acre of land which was received by the Ahtanum Indian Irrigation Project?

A. I believe the record for the main canal, according to my memory, is 2.68 on an average for the period 1920 to 1948.

Q. Now, would you state the quantity of water which was received in acre feet per acre per year prior to the first of July? Do you recall those figures?

A. Yes. That average for the period of 1920 to 1948 was 2.11 acre feet per acre.

Q. Now, how does that compare with the quantity of water per acre per year they received subsequent to the first of July?

A. That would mean that there would be approximately a half an acre-foot per acre received over the three months' period subsequent to the first of July.

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<sup>30</sup> R. 129, Pre-Trial Order, Agreed Facts, paragraph 11.

<sup>31</sup> R. 125, Pre-trial Order, Agreed Facts, paragraph 5.

Q. Now, would you state the effect that that has upon the agricultural economy of the area we will refer to as the Ahtanum Indian Irrigation Project?

A. The effect of that delivery of water, the bulk of which is in the first half of the irrigation season, namely, April, May and June, limits to a great extent the type of the crop that can be raised on that area to those crops that can be matured during the first half of the irrigation season prior to the first of July.

Q. By way of example, would you state what that means from the standpoint of the raising of alfalfa on this project, on the Ahtanum Indian Irrigation Project?

A. On a short water year, such as we have this year, it is going to limit the cutting of alfalfa to two cuttings instead of three.

Q. Does it have any other effect from the standpoint of fall feed?

A. With a full water supply, it would make three cuttings with a good pasturage subsequent to the third cutting.<sup>32</sup>

**1906 Is the Year in Which the Subject Matter of This Case Was First Referred to the Department of Justice for Action: *Munn v. Redman*** was initiated in May of 1906 by a water user north of Ahtanum Creek to enjoin the diversion of waters from that stream for use in the Ahtanum Indian Irrigation Project by an employee of the United States of America.<sup>33</sup> That case was referred to the Attorney General of the United States of America by a letter

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<sup>32</sup> R. 444, 445.

<sup>33</sup> United States of America, plaintiff's Exhibit 11-1.

dated August 23, 1906, from the then Acting Secretary of the Interior. Since that date to the present time there has been a continuous and unrelenting conflict between the claims of the Yakima Tribe of Indians to water from Ahtanum Creek and the defendants or their predecessors in interest diverting from the north bank of that stream.<sup>34</sup>

There is now pending in the United States District Court for the Eastern District of Washington, Southern Division, a "Petition for an Injunction Pending Appeal." The United States of America has answered that petition pursuant to the order of that court and has prayed for an early hearing in connection with that most recent development of the long-standing controversy.

A. *An Attempt to Compromise Munn v. Redman Was Undertaken by Representatives of the Secretary of the Interior:* Result of those efforts to negotiate that controversy are embraced in an alleged agreement dated May 9, 1908. With reference to that alleged agreement Mr. John H. Lynch, an attorney for defendants, declared that "\* \* \* the case of *Munn v. Redman, et al.*, begun \* \* \* in the year 1906," was concluded by "\* \* \* a compromise agreement of 1908."<sup>35</sup> By that purported compromise agreement there was allegedly allotted to the defendants or their predecessors in interest north of Ahtanum Creek 75% of the flow of that stream and 25% of it to the Yakima Tribe of Indians.

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<sup>34</sup> United States of America, plaintiff's Exhibit 11-1 through 11-146.

<sup>35</sup> United States of America, plaintiff's Exhibit No. 11-75; R. 547 et seq., Testimony of John H. Lynch.

B. *The Yakima Indians and the United States of America Have Consistently Denied the Validity of the Alleged Agreement of 1908*: Both the United States of America and the Yakima Indians have denied that the alleged agreement of 1908 was valid.<sup>36</sup> Moreover, diversions of the waters by the United States of America for use in the Ahtanum Indian Irrigation Project has consistently exceeded the 25% limitation upon the rights of the Indians which the alleged agreement of 1908 purported to fix.<sup>37</sup>

**Congress Refused to Approve the Agreement of 1908**: Though defendants sponsored this legislation in 1932, to approve the alleged agreement settling *Munn v. Redman* and apportioning the waters of Ahtanum Creek, Congress did not enact it:

#### A BILL

Approving and confirming contract for apportionment of waters of Ahtanum Creek, Washington, between Yakima Indian Reservation and lands north thereof, dated May 9, 1908.

*Be is enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That that certain agreement made and entered into on the 9th day of May, 1908, by and between W. W. Glidden \* \* \* and W. H. Code, chief engineer of irrigation, Indian Bureau, for and on behalf of

<sup>36</sup> United States of America, plaintiff's Exhibit No. 11-32 et seq.

<sup>37</sup> Please see in that connection Appendix B disclosing the actual diversions and percentages of water diverted each month during the irrigation season from Ahtanum Creek; stream flows and canal diversions, Ahtanum Creek System, Yakima Indian Reservation, Washington. See also R. 129, Pre-trial Order, Agreed Facts, paragraph 12.



the United States as first party, and approved by the Assistant Secretary of the Interior, June 30, 1908, wherein and whereby the waters of said Ahtanum Creek were apportioned 75 per centum to the lands on the north side of Ahtanum Creek and of the south fork of said Ahtanum Creek and 25 per centum to said Yakima Indian Reservation lands with provisions for the determination of the amount of such flow and the proper distribution thereof, be, and the same hereby is, approved, confirmed, ratified, and established as the proper apportionment and division of the waters of said Ahtanum Creek between the said lands.<sup>38</sup>  
[Emphasis partially supplied.]

**The Initiation of This Proceeding, Its Trial and Judgment:** This suit was instituted July 2, 1947, in the United States District Court for the Eastern District of Washington, Southern Division. That filing of the complaint in this cause was the culmination of more than forty years of effort by the representatives of the United States of America and of the Yakima Indian tribes to secure an adjudication of the respective rights of the Indians and the defendants or their predecessors in interest. As the exhibits in this case reveal, the Honorable Sam M. Driver now United States District Judge, but then United States Attorney at Spokane, Washington, emphasized the need of

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<sup>38</sup> United States of America, Plaintiff's Exhibit 9—Hearing Before Committee on Indian Affairs, United States Senate, 76th Congress, 1st Session, S. 3998, a Bill approving and confirming contract for apportionment of water of Ahtanum Creek, Washington between Yakima Indian Reservation and lands north thereof dated May 9, 1908.



this adjudication.<sup>39</sup> Institution of the proceedings at that time was prevented by Senate Resolution 165 which is as follows: "In the Senate of the United States, July 18, 1939, Resolved, That the Attorney General is requested to stay proceedings for adjudication of the rights to the waters available for the irrigation of the Ahtanum Creek Valley in the State of Washington until such time as the Secretary of the Interior transmits to Congress a report upon a survey to be made by him with respect to the possible means and feasibility of supplementing the supply of water for irrigation of the irrigable lands in such valley."<sup>40</sup> The record is replete with evidence from 1906 to date revealing the insistence by the United States of America and the Yakima Tribe of Indians that the conflict between the Indians and the defendants or their predecessors in interest could be resolved only by an adjudication of their respective rights. At all times the Yakima Tribe of Indians has rejected the alleged agreement of 1908 and demanded that the United States of America fulfill its obligations to them by appropriate proceedings to protect their rights in Ahtanum Creek.<sup>41</sup>

*A. Proceedings Preliminary to Trial:* Prior to the decision now on appeal before this Honorable Court and in advance of trial, extensive conferences were

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<sup>39</sup> United States of America, Plaintiff's Exhibit 11-114, letter of June 28, 1938. See also letter from Honorable Sam M. Driver dated September 24, 1938, United States of America, plaintiff's Exhibit 11-117.

<sup>40</sup> United States of America, plaintiff's Exhibit 11-127. See Appendix C, Exhibit 11-141.

<sup>41</sup> United States of America, plaintiff's Exhibits 11-104, 11-105, 11-106, 11-107.

held with counsel for the defendants.<sup>42</sup> There the issues in the cause were reviewed with court and counsel at great length. Based upon those conferences there was formulated the Pre-trial Order.<sup>43</sup> That Pre-trial Order was duly signed by the presiding judge, Honorable James Alger Fee, Judge of this Honorable Court. Preceding the signature of the trial judge, under the heading of "Conclusion" are these statements: (a) The Pre-trial Order was formulated in open court by counsel for the respective parties; (b) There are no other issues of law and fact except as embodied in the order.

*B. Delivery of Exhibits by United States of America to Defendants—The Stipulation of Them Into the Record Without Objection:* At the pre-trial conferences there were delivered to the defendants by the United States of America all of its exhibits. Those exhibits were retained in the office of counsel for the defendants for their examination and review. Counsel for the parties on May 24, 1951, two months prior to trial, "Stipulated and Agreed \* \* \* that the exhibits [of the United States of America] \* \* \* may be offered and admitted in evidence in this cause without objection from defendants above named."<sup>44</sup>

*C. The Trial:* The exhibits of the United States of America were duly offered and received in evidence. Similarly the defendants offered their exhibits in evidence and they were received. Extensive oral evi-

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<sup>42</sup> R. 211, et seq.

<sup>43</sup> R. 123 et seq. Please refer to Appendices A, B and C which define with particularity the rights and interests of the United States of America.

<sup>44</sup> R. 99.

dence was adduced by both the United States of America and the defendants. Among other things the defendants introduced into the record the decree alluded to in the Pre-trial Order purporting to adjudicate the rights of the individual water users situated north of Ahtanum Creek.<sup>45</sup> The trial commenced on August 1, 1951.<sup>46</sup> At the conclusion of the case in chief of the United States of America the defendants proceeded to call their witnesses and to adduce evidence in support of their claims in the cause.<sup>47</sup>

Both parties then rested.<sup>48</sup> Thereafter the court made an on-the-ground inspection of the lands of the defendants and of the Ahtanum Indian Irrigation Project within the Yakima Indian Reservation. It observed the ditches and canals of the respective parties.

Comprehensive briefs were filed in accordance with the court's direction.<sup>49</sup> The matter was fully argued based on the briefs thus filed.

*D. Decision of the Court, Objections By the United States of America, The Findings of Fact and Conclusions of Law and Judgment:*

March 9, 1953—The trial court filed its opinion in the case.

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<sup>45</sup> R. 127, Pre-trial Order, Agreed Facts, paragraph 7, referring to the decree in the case entitled *State of Washington, Plaintiff v. Annie Wiley Achepohl et al., defendants in the Superior Court For Yakima County, State of Washington* (139 Wash. 84; 245 Pac. 758 (1926)).

<sup>46</sup> R. 364.

<sup>47</sup> R. 485 et seq.

<sup>48</sup> R. 567.

<sup>49</sup> R. 568 et seq.

April 13, 1953—The United States of America filed its motion to modify and clarify the opinion.

June 22, 1953—The United States of America requested a hearing on the motion for modification and clarification.

May 4, 1954—There was filed by the trial court “An Amendment to its Opinion of March 7, 1954.”

October 20, 1954—The United States Attorney was directed to contact the trial court in regard to the ultimate disposition of the cause.

November 9, 1954—The trial court entered its findings of fact, conclusions of law and judgment from which this appeal is taken.<sup>50</sup>

A timely notice of appeal was filed by the United States of America on January 5, 1955.<sup>51</sup>

**The Judgment of Dismissal:** There was filed November 9, 1954, the Judgment of Dismissal in which the trial court declared: “It Is Hereby Ordered that the above entitled action and the complaint of the plaintiff herein [United States of America] be and the same is hereby dismissed on its merits.”<sup>52</sup>

#### ASSIGNMENT OF ERRORS

The United States of America, Appellant, assigns the following errors in the records and proceedings in this case:

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<sup>50</sup> See R. 167 et seq. See also *United States v. Ahtanum Irrigation District, et al.*, No. 312, 124 Fed. Supp. 818 (U. S. D. C. E. D. Wash. S. D., March 7, 1953; amended January 18, 1954; Supplemental Opinion January 18, 1954).

<sup>51</sup> R. 199.

<sup>52</sup> R. 166 and 167.

**I. The Judgment of Dismissal cannot be sustained on the basis of the law, the pleadings, the pre-trial order, or the extensive oral and documentary evidence adduced in the trial on the merits of the case**

a. The trial court erred in dismissing the complaint and the action in this cause because the United States of America fully stated a claim in its complaint; proved its rights to the use of water which it claimed and is entitled to the relief for which it prayed.<sup>53</sup>

b. The trial court erred in failing to enter judgment in favor of the United States of America awarding to it a priority in Ahtanum Creek in favor of the Yakima Tribe of Indians ahead of all of the defendants by reason of the doctrine of implied reservation as established by the Supreme Court of the United States of America and consistently adhered to by this Honorable Court.<sup>54</sup>

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<sup>53</sup> See in that regard R. 161, Finding of Fact No. 5, that there was no reservation by the Yakima Tribe of Indians of rights to the use of water to irrigate its arid lands; Finding of Fact No. 6 that at the time of the signing of the Treaty there was no thought of irrigation; repeated statements throughout both the Findings of Fact and Conclusions of Law that in some manner the Yakima Indians could be deprived of water requisite to make their lands habitable. Error is likewise evident in the assertion that the United States had not proved that it was a trustee of rights to the use of water for the Yakima Indians; R. 164, 165, 166, Conclusions of Law Nos. 2, 3, 5, 6, 8, that the United States had not proved the right to any particular quantity of water for the Yakima Indians and that the United States had not proved the defendants were interfering with the rights to the use of water to which the Yakima Indians were entitled. **Throughout the decision of the court, 124 F. Supp. 818, the findings of fact and conclusions of law, which are clearly in error, are repeated and these assignments are applicable to them.**

<sup>54</sup> The assertions throughout the Findings of Fact and Conclusions of Law that the Yakima Tribe of Indians had not reserved



c. The trial court erred in declaring that the laws of the State of Washington apply to the rights to the use of water claimed by the United States of America in Ahtanum Creek on behalf of the Yakima Tribe of Indians.<sup>55</sup>

## II. The Judgment of Dismissal cannot be sustained because the United States of America is entitled to the relief for which it prayed

a. The trial court erred in dismissing the case because the alleged agreement of May 9, 1908, concerning which the United States of America sought declaratory relief is invalid and without force and effect as it purported to compromise litigation under the control of the Attorney General, who was not a party to the alleged agreement.<sup>56</sup>

b. The trial court erred in dismissing the case because the subordinate officials of the Department of the Interior who executed the alleged agreement of 1908 were entirely without power or authority in their

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rights to the use of water for the lands in question are contrary to the principles enunciated in *Winters v. United States*, 207 U. S. 564 (1908) and repeated decisions of this Court which are subsequently reviewed.

<sup>55</sup> R. 163, 164, Findings of Fact Nos. 15, 18 and R. 165, Conclusion of Law No. 7, that the United States of America was bound by the laws of the State of Washington in connection with the rights claimed on behalf of the Yakima Indians.

<sup>56</sup> Declaratory relief was requested in connection with the alleged agreement of May 9, 1908, alluded to in Findings of Fact Nos. 14, 15 and 18, Conclusions of Law No. 7, R. 162, 163, 165. Throughout, the trial court treats the agreement as binding upon the United States, whereas the United States asserts in the litigation that the alleged agreement of May 9, 1908, is null and void and of no force and effect. Thus a judgment of dismissal was clearly erroneous.



attempted grant to the defendants or their predecessors in interest of 75% of the flow of Ahtanum Creek.

c. The trial court erred in dismissing the case because the Congress refused to approve and the Indians have never at any time accepted the alleged agreement of May 9, 1908.

d. The trial court erred in dismissing the case because neither the United States of America nor the Yakima Tribe of Indians nor the defendants or their predecessors in interest have complied with the alleged agreement of 1908.

**III. The Judgment of Dismissal may not be sustained by reason of the fact that it is predicated upon erroneous conclusions of law respecting the enforceability of a decree entered in a proceeding in a State court to which the United States of America was not a party**

a. The trial court erred in declaring that the United States of America could be bound by the *Achepohl Decree* entered in the State court.<sup>57</sup>

b. The trial court erred in stating that the United States of America had "encouraged" the adjudication from which emanated the *Achepohl* decree.<sup>58</sup>

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<sup>57</sup> R. 163, 164, Findings of Fact Nos. 15, 18, Conclusion of Law No. 7. The United States of America was not a party to the proceedings; had not waived its sovereign immunity from suit and could not have been bound by the decree in the state court.

<sup>58</sup> There is not a scintilla of evidence to support the conclusion that the United States of America encouraged the adjudication in the state court. See R. 163, Finding of Fact No. 15.

**IV. The Judgment of Dismissal may not be sustained because it seeks to subject the Yakima Tribe of Indians, contrary to the laws of the State of Washington, to the laws of that State**

a. The trial court erred by its judgment of dismissal as it permits the unconscionable waste of the waters of Ahtanum Creek by the defendants.<sup>59</sup>

b. The trial court erred by its judgment of dismissal as it increased rather than dissipated the grounds of dispute.

**ARGUMENT**

**Summary of Argument**

Unconscionable waste of water by the defendants and irreparable damage to the Yakima Tribe of Indians by a half century of encroachments by those defendants underlie this cause. By the treaty of 1855 the Yakima Tribe of Indians ceded to the United States of America a large tract of land in the State of Washington and reserved a much smaller area bordered to the north by Ahtanum Creek. Before the Treaty in 1847 irrigation was practiced from Ahtanum Creek by the Indians and the Missionaries. The lands are not habitable without irrigation. Under the doctrine of the *Winters* (207 U. S. 564) case there is an implied reservation for the lands of the Ahtanum Indian Irrigation Project within the Yakima Reservation. The trial court has denied the principles of the *Winters* doctrine and has dismissed the case and the complaint. That dismissal is entirely unjustified and may not be supported by reason of (a)

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<sup>59</sup> R. 471, 472, Testimony of George Sargent.

the agreed facts in the Pre-trial Order; (b) the introduction of every element of proof required to establish the rights to the use of water of the Yakima Tribe of Indians in Ahtanum Creek. Moreover, the United States of America requested on behalf of the Yakima Tribe of Indians that an illegal agreement of May 9, 1908 entered into by unauthorized subordinate officials of the Department of the Interior be declared null and void and of no force and effect.

Plain and serious error was likewise made by the trial court in declaring that the laws of the state of Washington governed. That conclusion being contrary to the Enabling Act and Constitution of the State of Washington and decisions of the Supreme Court of the United States.

A dismissal under the circumstances, the case having been fully tried and proved on the merits, is a manifest injustice and cannot be sustained by the facts or the law.

**Both the law and facts entitle the United States of America to judgment in this case**

This Honorable Court is respectfully petitioned to consider, at the outset, the undisputed and unchallenged facts of this case. Those facts are [1] agreed to by the parties;<sup>60</sup> [2] proved by the evidence.<sup>61</sup>

Proved beyond question are these unassailable facts:

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<sup>60</sup> R. 123, Please refer to Pre-trial Order, Agreed Facts, and Appendices A, B, and C.

<sup>61</sup> R. 99, Stipulation admitting without objection the exhibits of the United States of America.

1. Title to the lands in the Ahtanum Indian Irrigation Project was reserved by the Yakima Tribe of Indians.<sup>62</sup>

2. The lands have been allotted to individual Indians.<sup>63</sup>

3. These lands are semiarid and may be successfully cultivated only by irrigation from Ahtanum Creek.<sup>64</sup>

4. Ahtanum Creek is the cradle of irrigation in the State of Washington, being practiced by the Indians in the year 1847, prior to the Treaty of 1855.<sup>65</sup>

5. Soil survey proves the irrigated and irrigable lands.<sup>66</sup>

6. These exhibits, maps of the area in question, reveal—[a] Ahtanum Irrigation System ownership south [Indian] side of Ahtanum Creek;<sup>67</sup> [b] Development of Ahtanum Indian Irrigation Project System;<sup>68</sup> [c] Irrigable lands in Ahtanum Indian Irrigation Project served by Ahtanum Creek.<sup>69</sup>

7. Proved and likewise agreed upon among the parties are these conclusive facts respecting the

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<sup>62</sup> R. 123, Pre-trial Order, Agreed Facts, paragraph 1; See also *supra*, page 7 where exhibits proving title are chronicled.

<sup>63</sup> R. 124, Pre-trial Order, Agreed Facts, paragraph 9; See also United States of America plaintiff's exhibits 2-a-1 et seq.; 3a et seq.; 4b, c, d.

<sup>64</sup> R. 124, Agreed Facts, paragraphs 2 and 4.

<sup>65</sup> See *supra*, page 4.

<sup>66</sup> United States of America, plaintiff's exhibit 7; see also United States of America, plaintiff's exhibit 5a, disclosing location of allotments and ditches from which delivery is made.

<sup>67</sup> United States of America, plaintiff's Exhibit 5a.

<sup>68</sup> United States of America, plaintiff's Exhibit 5b.

<sup>69</sup> United States of America, plaintiff's Exhibit 5d.

claimed rights to the use of water of the United States of America in Ahtanum Creek which are asserted on behalf of the Yakima Indians.

*Appendix A of this Brief Discloses:*<sup>70</sup> Land allotment to Indian, number; ditch serving land; dates when water was first delivered to allotment; point of diversion from ditch; for each tract of allotted land [a] the irrigated acreage, [b] irrigable acreage.

The main canal and the lower canal are the principal structures of the Ahtanum Indian Irrigation Project. Water is now and has been diverted from Ahtanum Creek since completion of those ditches in 1915 to irrigate the Indian allotment lands set forth in Appendix A of this brief, which is reviewed in the paragraph immediately preceding. Those two main canals and the smaller canals are described with particularity in the Pre-trial Order under Agreed Facts.<sup>71</sup> Locations of those canals and the diversion works for each allotment have likewise been proved by maps and oral testimony.<sup>72</sup>

*Appendix B of this Brief Discloses:*<sup>73</sup> “Stream Flow South Fork Ahtanum Creek” and “Stream Flow North Fork Ahtanum Creek” during each month of the irrigation season. Likewise disclosed by Appendix B are “Stream Flows and Canal Diversions

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<sup>70</sup> Appendix A of Pre-trial Order; United States of America, plaintiff's Exhibit 4-e; See also R. 127, Pre-trial Order, Agreed Facts, paragraph 6.

<sup>71</sup> R. 125, 126, 127.

<sup>72</sup> R. 441, Testimony of Paul F. Henderson.

<sup>73</sup> Pre-trial Order, Appendix B; United States of America, plaintiff's Exhibit 4-e; See paragraph 12, Pre-trial Order, Agreed Facts, R. 129.



Ahtanum Irrigation System Yakima Indian Reservation," setting forth [a] the year; [b] the total irrigated acreage of the Ahtanum Indian Irrigation Project; [c] the total flow in acre-feet of Ahtanum Creek each month of the irrigation season; [d] the total diversion each month of the irrigation season by the Ahtanum Indian Irrigation Project; [e] the percentage of the total stream flow diverted from Ahtanum Creek each month of the irrigation season and utilized upon the Ahtanum Indian Irrigation Project.<sup>74</sup> The continued and irreparable damage by reason of the shortage of water properly to irrigate the lands of the Yakima Indians has likewise been disclosed.<sup>75</sup>

*The Claims of Defendants:* At the trial the defendants adduced evidence of their claimed rights to the use of water.<sup>76</sup> Similarly by oral testimony they attempted to prove the diversion of water from Ahtanum Creek and application of it for purposes of irrigation.<sup>77</sup>

*The Controversy, Actual, Protracted and Contentious:* Few controversies over rights to the use of water have been more bitter, contentious and protracted than the struggle between the Yakima Indians and the defendants or their predecessors in interest

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<sup>74</sup> R. 129.

<sup>75</sup> Please refer to testimony of Paul F. Henderson, *supra*, page 8, R. 441.

<sup>76</sup> Defendants' Exhibit 139, the decree in the case of *State of Washington v. Annie Wiley Achepohl, et al., defendants*, 139 Wash. 84; 245 Pac. 758 (1926).

<sup>77</sup> R. 486, testimony of the President of the Board of Directors of Ahtanum Irrigation District.



over the waters of Ahtanum Creek, unabated since 1906 when *Munn v. Redman* was initiated.<sup>78</sup> Reference in regard to this conflict is made to Appendix C of this brief. There are listed one hundred and forty-six exhibits disclosing the unending struggle of the United States of America and the Yakima Indians to protect the rights to the use of water claimed by them in Ahtanum Creek.<sup>79</sup> Though the content of each exhibit there listed is set forth, an examination of the exhibits themselves will reveal the repeated efforts of the United States of America to initiate these proceedings and the measures adopted by defendants or their predecessors to prevent the trial of it. Over a quarter of a century ago the resort to firearms by the Indians to protect their rights was deemed essential.<sup>80</sup>

Recognition of the existence of the controversy but not reflective of the inflammatory character of it, as proved by the exhibits alluded to above, is this statement from the Agreed Facts in the Pre-trial Order: "There are not sufficient waters in Ahtanum Creek to irrigate lands on both sides of said creek now being partially irrigated from that source."<sup>81</sup>

Declaratory relief respecting the validity of the alleged agreement of May 9, 1908, was prayed for by the United States in addition to the petition for a

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<sup>78</sup> See *supra*, page 9.

<sup>79</sup> United States of America, plaintiff's Exhibits Nos. 11-1 through 11-146, Appendix C.

<sup>80</sup> R. 470, Testimony of George Sargent.

<sup>81</sup> R. 129, Pre-trial Order, Agreed Facts, paragraph 11.

decree quieting its title to rights to the use of water in Ahtanum Creek.<sup>82</sup>

**A. Judgment of dismissal is plain and serious error—cannot be supported**

A more contentious controversy needing resolution is difficult to perceive—yet after a full trial on the merits the court below ordered “the above entitled action and the complaint \* \* \* is hereby dismissed on its merits.”<sup>83</sup> How may such a Judgment of Dismissal be sustained? That it may not be sustained is disclosed in the paragraphs which follow.

*The Congress Is Charged by the Constitution to Protect the Rights of the Indians:* There resides with the United States of America a fiduciary obligation stemming from the Constitution to protect the Indians.<sup>84</sup> Recently the highest Court made this statement: “\* \* \* this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people. \* \* \* In carrying out its obligations with the Indian tribes, the Government is something more than a mere contracting party. \* \* \* it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the

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<sup>82</sup> Please refer in that regard to R. 12, paragraph XIII of the complaint, and appendix; See also R. 26, Exhibit B of complaint.

<sup>83</sup> R. 167.

<sup>84</sup> Constitution of the United States, Article I, Section 8, Clause 3; *United States v. 43 Gallons of Whisky, etc.*, 93 U. S. 188, 194 (1876); *Cherokee Nation v. Georgia*, 30 U. S. 1, 17 (1831).

most exacting fiduciary standards.”<sup>85</sup> Earlier the same Court had made this pronouncement in regard to that relationship with the Indian tribes: “\* \* \* although the United States always had legal title to the land and power to control and manage the affairs of the Indians, it did not have power to give to others or to appropriate to its own use any part of the land without rendering, or assuming the obligation to pay, just compensation to the tribe, for that would be, not the exercise of guardianship or management, but confiscation.”<sup>86</sup> Thus the historical concept of the relationship between the United States and the Indians as first expressed by Chief Justice Marshall has been adhered to consistently since its pronouncement.

*The Attorney General of the United States Is Required to Represent the Indians in Proceedings of This Character:* By statute there resides with the Attorney General of the United States and the United States Attorneys the obligation to represent the Indians in proceedings of the nature here involved.<sup>87</sup> Reference in that connection is made to the complaint<sup>88</sup> and the Pre-trial Order.<sup>89</sup> On repeated occasions this Honorable Court has entertained appeals in which the United States of America appeared, as here, to defend rights to the use of water reserved by

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<sup>85</sup> *Seminole Nation v. United States*, 316 U. S. 286, 296–297 (1941).

<sup>86</sup> *United States v. Shoshone Tribe of Indians*, 304 U. S. 111, 115–116 (1938).

<sup>87</sup> 25 U. S. C. 175; Please refer to 5 U. S. C. 311 and Reorganization Plan No. 2.

<sup>88</sup> R. 1 et seq.

<sup>89</sup> R. 123 et seq.

the Indians or which were reserved for them by the United States of America.<sup>90</sup>

*The Trial Court Had Jurisdiction:* It is specifically provided that the United States district courts shall have "original jurisdiction of all civil actions, suits or proceedings commenced by the United States, \* \* \*." <sup>91</sup> Similarly it is provided that "In a case of actual controversy within its jurisdiction, \* \* \* any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, \* \* \*." <sup>92</sup> From the cases which have been cited and those which follow, it is eminently clear that the Federal courts have jurisdiction to [1] adjudicate rights to the use of water claimed and exercised by the United States of America; [2] entertain proceedings for declaratory relief, as in this case, in which the validity of the agreement of May 9, 1908, is attacked.

*Every Fact Has Been Alleged and Proved Which Entitles the United States of America to a Decree Quieting Its Title to the Rights to the Use of Water in Ahtanum Creek for a Judgment Declaring the Agreement of May 9, 1908, Null and Void: Ignored*

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<sup>90</sup> *Winters v. United States*, 207 U. S. 564 (1908), affirming this Court, 143 Fed. 740; 148 Fed. 684. *United States v. Powers*, 305 U. S. 527 (1939), affirming this Court 94 F. 2d 783. *United States v. Walker River Irrigation District, et al.*, 104 F. 2d 334 (C. A. 9, 1939). *Conrad Investment Co. v. United States*, 161 Fed. 829 (C. A. 9, 1908). *United States v. McIntire*, 101 F. 2d 650 (C. A. 9, 1939). *Skeem v. United States*, 273 Fed. 93 (C. A. 9, 1921).

<sup>91</sup> 28 U. S. C. 1345, formerly 28 U. S. C. 41 (1).

<sup>92</sup> 28 U. S. C. 2201.



by the trial court is the fact that "Many suits have been allowed to quiet title to water rights, as to other property."<sup>93</sup> That is the principal relief sought here by the United States of America. In seeking that relief there has been adherence to established practice and procedure. A review of the complaint will reveal the sufficiency of the allegations to state a claim for the relief in question. That statement is predicated upon the decisions of the Supreme Court of the United States of America and of Washington's highest court.<sup>94</sup> The Washington court has recognized the sufficiency of a pleading where "The complainant \* \* \* alleged ownership \* \* \* of the first right to divert water. \* \* \* it challenged the defendants to set up any claims they had against such rights. In actions to quiet title to real estate, where such general allegations of ownership are made, it is undoubtedly the duty of a defendant to set up any claim he may have of either a legal or equitable nature, \* \* \*."<sup>95</sup>

In another leading case in the State of Washington this statement has been made: "The theory of the complaint is to quiet the title of contending claimants for the use of the waters of Stemilt Creek. \* \* \* The allegations in the complaint of ownership of the right

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<sup>93</sup> 1 *Wiel Water Rights in the Western States*, 3d ed., Sec. 654, page 726; 2 *Kinney on Irrigation and Water Rights*, 2d ed., page 1330.

<sup>94</sup> *Ely v. New Mexico & Arizona RR. Co.*, 129 U. S. 291 (1889); *Spring Hill Irr. Co. v. Lake Irr. Co.*, 42 Wash. 379, 382, 85 Pac. 6, 7 (1906).

<sup>95</sup> *Spring Hill Irr. Co. v. Lake Irr. Co.*, 42 Wash. 379, 382, 85 Pac. 6, 7 (1906).



to the use of water is sufficient.”<sup>96</sup> A similar view has been expressed in another decision from the State of Washington.<sup>97</sup>

Far more important, however, than the allegations of the complaint is the fact that the United States of America and the defendants here approved, and the court entered, a Pre-trial Order pursuant to which the case proceeded. That Pre-trial Order which this Honorable Court is respectfully requested to review in detail, sets forth succinctly the agreed facts and the contentions of the parties in a manner which entitled the United States of America to judgment rather than dismissal. This Court has, of course, recognized the propriety of quiet title proceedings in regard to rights to the use of water.<sup>98</sup> Thus to dismiss the case in view of the complaint, the Pre-trial Order and the proved facts is contrary to the sound and basic principles of justice.

It is difficult to perceive any basis whatever for the dismissal of the complaint in regard to the quiet title aspects of the cause. Similarly in view of the actual contentious, protracted controversy, in regard to the alleged agreement of 1908, it is impossible to reconcile the dismissal by the trial court of this cause with the numerous authorities directly in opposition to such a disposal of the matter. Those decisions are subsequently reviewed.

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<sup>96</sup> *Miller v. Lake Irrigation Co.*, 27 Wash. 447, 448, 67 Pac. 996, 997 (1902).

<sup>97</sup> *Rogers v. Miller*, 13 Wash. 82, 84, 42 Pac. 525, 526 (1902).

<sup>98</sup> *Vineyard Land & Stock Co. v. Twin Falls Oakley Land & Water Co.*, 245 Fed. 30 (C. A. 9, 1917).

**B. The invalidity of the alleged agreement of May 9, 1908, should have been declared as prayed by the United States of America**

Both in the complaint and the Pre-trial Order reference is made by the United States of America to the alleged agreement of May 9, 1908, and its validity denied.<sup>99</sup> Emphasized both in the pleadings and the Pre-trial Order is the fact that subordinate officials of the Department of the Interior could not [1] settle by compromise the case of *Munn v. Redman*, the Attorney General alone would have that power;<sup>100</sup> [2] no official could relinquish, as was attempted by the illegal agreement of May 9, 1908, 75% of the natural flow of Ahtanum Creek.<sup>101</sup>

This salient factor in regard to [1] and [2] must be emphasized:

Congress after extensive hearings refused to enact legislation sponsored by defendants to ratify the illegal agreement of May 9, 1908.<sup>102</sup>

Declaratory relief of the character sought by the United States of America is in accordance with established practice;<sup>103</sup> a denial of that relief by the trial court is a manifest injustice.

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<sup>99</sup> R. 13, Complaint, paragraph XIII; R. 131, Pre-trial Order, Par. 7.

<sup>100</sup> See *infra*, page 43, for authorities.

<sup>101</sup> See *infra*, page 43, for authorities.

<sup>102</sup> See United States of America, plaintiff's Exhibit 9; *Supra* page 11.

<sup>103</sup> Wiel, *Water Rights in the Western States*, 3d ed., vol. 1, p. 728, Sec. 654; p. 859, sec. 802. *City of Los Angeles v. City of Glendale*, 23 Cal. 2d 68, 142 P. 2d 289 (1943); *San Diego v. Cuyamaca Water Co.*, 209 Cal. 105, 287 Pac. 475, 496 (1930).

Likewise to be noted is this additional fact respecting the alleged agreement of May 9, 1908: Though the trial court appears to recognize that the apportionment of 75% of the waters to the defendants and 25% of the waters to the Yakima Indians was on the basis of the lands presently irrigated, the fact is to the contrary. The unauthorized attempt to apportion the water by the alleged agreement of 1908 was on the basis of the Indians irrigating 1,200 acres and the defendants approximately 4,000. At the present time of course, the Indians are irrigating to the extent that water is available, up to 5,000 acres and the water users north of the stream are irrigating up to approximately 10,000 acres. Manifestly, therefore, the apportionment which was attempted could have no bearing on the acreages over and above those which were irrigated at the time of the apportionment. It is eminently clear from an examination of the document itself that the attempted apportionment was on the basis of the situation which then existed.<sup>104</sup>

At this juncture it is essential to allude to the plain and serious error on the part of the trial court in its decision and findings of fact and conclusions of law in denying the applicability of the *Winters Doctrine*.<sup>105</sup>

*The Decision, Findings of Fact, Conclusions of Law, and Judgment Are Contrary to the Decisions of the Supreme Court of the United States of America and This Honorable Court:* It is respectfully submitted that the facts of this case bring the proceedings

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<sup>104</sup> R. 429, Testimony of John H. Lynch. See R. 128, Pre-trial Order, Agreed Facts, paragraph 10.

<sup>105</sup> 207 U. S. 564 (1908).

squarely within the doctrine enunciated by the *Winters* case.<sup>106</sup> In that case there had been reserved by the Indians in their treaty with the United States a smaller tract out of a much larger area originally claimed by them. The lands were in an arid region. Farming could not be successfully practiced without irrigation though the objective was to turn the Indians from their nomadic way of life to one of farming. Bordering that reservation was the Milk River. White settlers had claims to rights to the use of water from the stream in question pursuant to the laws of the State of Montana. Presented was the question of the respective rights to the use of water from the Milk River. On the subject, sustaining the claim of the Indians, the highest Court declared: "The reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the Government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. \* \* \* The lands were arid and, without irrigation, were practically valueless. And yet, it is contended, the means of irrigation were deliberately given up by the Indians and deliberately accepted by the Government."<sup>107</sup> Then the highest Court denied the contention that the United States had intended to place the Indians on lands not fit

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<sup>105</sup> 207 U. S. 564 (1908).

<sup>104</sup> R. 429, Testimony of John H. Lynch. See R. 128, Pre trial

<sup>107</sup> *Winters v. United States*, 207 U. S. 564, 576 (1908).

for habitation without rights to the use of water or that subsequent to the treaty had in some manner so deprived them of those rights. These terms were used by the Court: "The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. *The United States v. The Rio Grande Ditch & Irrigation Co.*, 174 U. S. 690, 702; *United States v. Winans*, 198 U. S. 371. That the Government did reserve them we have decided, and for a use which would be necessarily continued through years."<sup>108</sup>

In affirming this Court in that decision there was proclaimed the doctrine of implied reservation of rights to the use of water from streams within or bordering upon Indian reservations in the arid West. That tenet of the law reflects a practical, a humane attitude, followed by the courts in numerous cases identical with that now before this Court. Using virtually the same terminology as that of the Supreme Court, this Honorable Court in a case involving the same questions as here presented, stated: "The lands within these reservations are dry and arid, and require the diversion of waters from the streams to make them productive and suitable for agricultural, stock raising, and domestic purposes. What amount of water will be required for these purposes may not be determined with absolute accuracy at this time; but the policy of the government to reserve whatever water of Birch creek may be reasonably necessary, not only for present uses, but for future requirements, is clearly within

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<sup>108</sup> *Winters v. United States*, 207 U. S. 564, 577 (1908).



the terms of the treaties as construed by the Supreme Court in the *Winters* Case.”<sup>109</sup>

Another highly important and significant case arose in connection with rights to the use of water for the Indians of the Walker River Indian Reservation. That reservation was established by departmental action.<sup>110</sup> There the court had before it the many factors which are here presented. Having accorded those facts a most deliberate consideration, it determined that when the Indian reservation in question was established certain water was reserved on behalf of the Indians from the stream involved. On the subject this statement was made: “In the *Winters* case, as in this, the basic question for determination was one of intent—whether the waters of the stream were intended to be reserved for the use of the Indians, or whether the lands only were reserved.” Continuing, the court stated: “The intention had to be arrived at by taking account of the circumstances, the situation and needs of the Indians and the purpose for which the lands had been reserved.” Further, the court stated: “We turn now to the circumstances under which the Walker River Indian Reservation was set aside.” This Honorable Court then pointed out that cultivation of portions of the reservation was early commenced and water for irrigation purposes diverted from the stream. There was: “The gradual but substantial growth of the practice

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<sup>109</sup> *Conrad Investment Co. v. United States*, 161 Fed. 829, 832 (C. A. 9, 1908).

<sup>110</sup> *United States v. Walker River Irrigation Dist., et al.*, 104 F. 2d 334 (C. A. 9, 1939).

of farming and irrigation on the reservation \* \* \*. \* \* \* The necessity of having a water supply if any crops were to be produced on the reservation was known to the Department. It would be irrational to assume that the intent was merely to set aside the arid soil without reserving the means of rendering it productive." Premised upon those known factors, the court declared: "We hold that there was an implied reservation of water to the extent reasonably necessary to supply the needs of the Indians."<sup>111</sup>

Departure by the trial court from the doctrine of implied reservation as recognized in the *Winters* case presents to this Court for resolution a grievous injustice against the Yakima Tribe of Indians. The United States of America would not be a party to a treaty and this Court and the highest Court have so held, which would strip the Indians of the vast area they once owned and restrict them to the semiarid lands they now occupy without assuring them a water supply of the character which they here claim. It was plain and serious error for the trial court to depart as it has departed both in its findings of fact, conclusions of law and decision, from the basic doctrine of the *Winters* case which guarantees to the Indians a supply of water pursuant to which they would be able to provide themselves with a home and abiding place as was contemplated by the Treaty. It is abundantly manifest, therefore, that the long-established principle of the law adhered to by this Court and the Supreme Court in innumerable cases

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<sup>111</sup> *United States v. Walker River Irrigation District, et al.*, 104 F. 2d 334, 337, 338 and 339 (C. A. 9, 1939).

should be applied and the decision and judgment of the lower court reversed.<sup>112</sup>

**Errors, plain, serious and reversible in character, were made by the Trial Court both in law and fact**

In the succeeding paragraphs the basic errors of the trial court are reviewed.

*The Trial Court Erred in Stating that Ahtanum Creek Is Not Included in the Yakima Indian Reservation:* A more basic error than the trial court's declaration that "the north boundary of said Reservation ran along Ahtanum Creek but did not include said stream" may not be perceived.<sup>113</sup> The trial court recognizes that Ahtanum Creek is the northern boundary of the reservation in question. It is so provided in the Treaty.<sup>114</sup> Under those circumstances, according to the principles enunciated by Vattel, in the Law of Nations the least the Yakima Tribe was entitled to claim is to the thread of that stream.<sup>115</sup> That most certainly is the rule between individuals. The highest Court has stated: "Proprietors, bordering on streams not navigable, unless restricted by the terms of their

<sup>112</sup> *Winters v. United States*, 207 U. S. 564 (1908), affirming this Court, 143 Fed. 740; 148 Fed. 684. *United States v. Powers*, 305 U. S. 527 (1939), affirming this Court 94 F. 2d 783. *United States v. Walker River Irrigation District, et al.*, 104 F. 2d 334 (C. A. 9, 1939). *Conrad Investment Co. v. United States*, 161 Fed. 829 (C. A. 9, 1908). *United States v. McIntire*, 101 F. 2d 650 (C. A. 9, 1939). *Skeem v. United States*, 273 Fed. 93 (C. A. 9, 1921).

<sup>113</sup> R. 160, Finding of Fact No. 3.

<sup>114</sup> R. 18, Treaty of 1855, Article 2.

<sup>115</sup> Laws of Nations, Vattel, 1859, page 120.

grant, hold to the centre of the stream; \* \* \*.”<sup>116</sup> In regard to the subject this emphatic statement was taken from a recent decision of the Supreme Court of the State in which Ahtanum Creek flows: “*The boundary line of a nonnavigable stream is, in Washington law, the thread of the stream.*”<sup>117</sup> [Emphasis supplied.]

The error of the trial court is patent in that regard. Equally contrary to the finding of fact alluded to and diametrically opposed to the trial court’s finding is this statement from that court’s decision: “Here, in accordance with previous decisions, we decide that there was a reservation of the use of some waters of the Ahtanum.”<sup>118</sup> Those two totally incompatible statements by the trial court may not stand, it is respectfully submitted. That error nevertheless pervades the findings of fact, conclusions of law, judgment and decision of the trial court.

*The Court Erroneously Attaches Significance to the Fact That Some of the Waters of Ahtanum Creek Rise Outside of the Reservation:*<sup>119</sup> There is no basis for attaching significance to the fact that the source of some of the waters of Ahtanum Creek flow from streams outside of the Reservation. That fact prevailed in connection with other cases in which the doctrine of implied reservation has been applied by

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<sup>116</sup> *Railroad Co. v. Schurmeir*, 74 U. S. 272, 287 (1868).

<sup>117</sup> *Hirt v. Entus*, 37 Wash. 2d 418, 428, 224 P. 2d 620, 626 (1950).

<sup>118</sup> *United States v. Ahtanum Irrigation District, et al.*, 124 F. Supp. 818, 831 (U. S. D. C. E. D. Wash. S. D. 1954).

<sup>119</sup> R 161, Finding of Fact No. 4; *United States v. Ahtanum Irrigation District, et al.*, 124 F. Supp. 818, 831.



this Court.<sup>120</sup> A different rule would be clearly destructive of the rights to the use of water reserved by the Indians when they relinquished the vast areas included in the Treaty of 1855 and restricted themselves to the much smaller area bordered on the north by Ahthanum Creek.

*The Trial Court Erred in Declaring There Was No Reservation by the Treaty of 1855 "either express or implied":*<sup>121</sup> The error of the trial court is evidenced by the facts reviewed above and the repeated decisions of this Honorable Court and the Supreme Court in connection with identical factual situations.<sup>122</sup>

*The Trial Court Erred when it Declared That "defendants owning land north of the Ahtanum have not infringed upon any water rights of the United States, the Confederated Tribes, or individual Indians under the proof herein":*<sup>123</sup> "Clearly in error" is the only appropriate description that may be made of that statement by the trial court in its findings. An examination of Appendix C of this brief discloses a continuous and ever contentious struggle since 1906 between the Yakima Tribes of Indians and the defendant water users north of Ahtanum Creek. Armed guards were placed by the Indians a quarter of a century ago to protect the waters which they claimed

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<sup>120</sup> *Conrad Investment Co. v. United States*, 161 Fed. 829 (C. A. 9, 1908). *Winters v. United States*, 207 U. S. 564 (1908); affirming this Court, 143 Fed. 740; 148 Fed. 684.

<sup>121</sup> R. 161, Finding of Fact No. 5.

<sup>122</sup> See *supra*, page 37, footnote 112.

<sup>123</sup> R. 161, Finding of Fact No. 5.



and to prevent the diversion of those waters by the defendants who had constructed a dam and thus were taking all of the waters of the stream in question.<sup>124</sup> There is today pending in the trial court a "Petition for an Injunction Pending Appeal" filed by defendants here, in which the conflict between the defendants and the Yakima Tribe of Indians is clearly defined. In that proceeding it is asserted that the Indians have diverted 1,000 acre-feet of water in excess of their rights in Ahtanum Creek. Thus on the basis of the facts reviewed in this case, of the record—and even of the opinion itself written by the trial court—it is impossible to support the conclusion referred to in this paragraph.<sup>125</sup>

*The Trial Court Erred in Stating That at the Time "of the signing of the Treaty of 1855 there was little or no thought of irrigation or the use of water for irrigation purposes":*<sup>126</sup> "Clearly erroneous" is the only appropriate designation of that conclusion. As pointed out above, one of the attorneys for the defendants has described Ahtanum Creek as the "cradle and proving ground of irrigation in the State of Washington." As disclosed in the factual statements above, waters were diverted from Ahtanum Creek and utilized by the Indians in the year 1847, prior to the Treaty of 1855.<sup>127</sup> Water was essential successfully to

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<sup>124</sup> R. 470, Testimony of George Sargent, United States of America, plaintiff's witness.

<sup>125</sup> See factual review respecting conflict, page 9.

<sup>126</sup> R. 161, Finding of Fact No. 6.

<sup>127</sup> See *supra*, page 4, United States of America, plaintiff's Exhibit 12, Yakima Valley Catholic Centennial, The Beginning of Irrigation in the State of Washington.

farm those arid lands; that fact was known then. It is known now. This Court and the highest Court have declared that our Nation would not force the Indians onto arid lands and then deprive them of water as is attempted here.

*The Trial Court Erred in Declaring That the United States "has no rights in virtue of its sovereignty":*<sup>128</sup> That statement is contradictory of Findings No. 3, No. 10 and No. 11. The United States of America by the Constitutional principles long recognized by the highest Court and this Honorable Court, has rights as a sovereign in Ahtanum Creek in a fiduciary obligation to protect the rights to the use of water of the Indians.<sup>129</sup>

*The Trial Court Erred in Declaring That the United States "as sovereign and as owner recognized appropriation and beneficial use as the sole method of acquisition of water rights in this area":*<sup>130</sup> The statement of the trial court just quoted is contrary to the laws of the State of Washington.<sup>131</sup> There the riparian doctrine is specifically recognized. It is likewise contrary to the principles enunciated by the Supreme Court of the United States.<sup>132</sup> There the Court declared that the Acts of 1866, 1870 and the Desert Land Act of 1877,<sup>133</sup> have no application to reserved lands of

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<sup>128</sup> R. 161, Finding of Fact No. 7.

<sup>129</sup> See *supra*, page 26, "The Congress is charged by the Constitution to protect the rights of the Indians."

<sup>130</sup> R. 161, Finding of Fact No. 8.

<sup>131</sup> *Benton v. Johncox*, 17 Wash. 277, 49 Pac. 495 (1897).

<sup>132</sup> *Federal Power Commission v. State of Oregon*, 349 U. S. 435 (1955).

<sup>133</sup> 43 U. S. C. 321; 661.

the character here involved. The conclusion is likewise contrary to the doctrine of the *Winters* case. There under precisely the same facts which prevail in this case it is declared that rights to the use of water were impliedly reserved from streams bordering or traversing Indian reservations in the arid West.

*The Trial Court Erred in Declaring That "the State of Washington has prescribed appropriation and beneficial use as the method of acquiring water rights in this area":*<sup>134</sup> The conclusion of law expressed in the finding is clearly erroneous. It was specifically prescribed in the Enabling Act pursuant to which the State of Washington joined the Union; expressly declared in the Constitution of that State that "Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States, \* \* \*."<sup>135</sup> Respecting identical provisions in regard to the State of Montana this Court has declared unequivocally that the State laws regarding the appropriation and use of rights to the use of water have no application within Indian reservations.<sup>136</sup>

*The Trial Court Erred in Declaring That "the United States by administrative, executive and legislative action has confirmed the rights of defendants \* \* \* to lands and water rights outside the Yakima Indian Reservation, and by administrative, executive and legislative action has confined lands within the Yakima Indian Reservation not yet pat-*

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<sup>134</sup> R. 162, Finding of Fact No. 12.

<sup>135</sup> See Enabling Act, Section 4, Second subdivision; Constitution of the State of Washington, Article XXVI, Second subdivision.

<sup>136</sup> *United States v. McIntire*, 101 F. 2d 650 (C. A. 9, 1939).

ented to the use of water which these presently received":<sup>137</sup> There is not a scintilla of evidence to support that conclusion nor a single authority to sustain it. To the contrary, as is reflected by Appendix C of this brief, there has been a continuous effort on the part of the executive branch of the Government to protect the rights of the Yakima Indians in Ahtanum Creek.

*The Trial Court Erred in Declaring That the United States of America Had Entered Into the Agreement of May 9, 1908, Purporting to Give Away to Defendants 75% of the Natural Flow of Ahtanum Creek and Reserving 25% of It to the Yakima Tribe of Indians:*<sup>138</sup> The finding alluded to here is incorrect both in fact and law. *Munn v. Redman*<sup>139</sup> instituted in 1906, was the first case involving the subject matter of this litigation. Subordinate officials of the Department of the Interior attempted to settle it by compromise. Few principles of law are more basic than that the Attorney General of the United States is the only one empowered to represent the United States in litigation and to compromise suits of the character here involved.<sup>140</sup> That official did not and could not in equity and good conscience comprise it in that manner. Efforts by the subordinate officials of the Department of the Interior to usurp the powers of the Attorney General

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<sup>137</sup> R. 162, Finding of Fact No. 13.

<sup>138</sup> R. 162, Finding of Fact No. 14.

<sup>139</sup> See page 9, *supra*.

<sup>140</sup> 5 U. S. C. 291; 5 U. S. C. 303, 310; 25 U. S. C. 175. 22 O. A. G. 491, 494 (1899). 23 O. A. G. 507, 508 (1901). Confiscation Cases, 74 U. S. 454, 458, 459 (1868). See also 81 A. L. R. 128 and cases cited. 43 Am. Jur., Public Officers, sec. 249; sec. 256.



and to settle *Munn v. Redman* by giving 75% of the water to defendants can be described only as abortive. Equally clear is the fact that the attempt by the officials of the Department of the Interior to give away 75% of Ahtanum Creek was undertaken wholly without authority,<sup>141</sup> and as pointed out by the Supreme Court, "an extinguishment [of property rights] cannot be lightly implied in view of the avowed solicitude of the Federal Government for the welfare of its Indian wards."<sup>142</sup> The agreement of being "\* \* \* not the exercise of guardianship or May 9, 1908, is aptly described in these terms as management, but confiscation."<sup>143</sup>

*Recognizing the Invalidity of the Agreement of May 9, 1908, Defendants Sponsored Legislation in Congress to Secure Approval of it:* Congress refused to enact it.<sup>144</sup> Equally important is the fact that the United States of America has consistently diverted in excess of 25% of the stream flow of Ahtanum Creek. To be noted likewise is the fact that the alleged agreement of May 9, 1908, required the defendants to install headgates and measuring devices which they have not done.<sup>145</sup> Rather than installing headgates, defendants have at all times followed wasteful practices, allowing the water to run from

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<sup>141</sup> *United States v. Shoshone Tribe of Indians*, 304 U. S. 111, 115, 116 (1938).

<sup>142</sup> *United States v. Santa Fe Pacific R. Co.*, 314 U. S. 339, 354 (1941).

<sup>143</sup> *United States v. Shoshone Tribe of Indians*, 304 U. S. 111, 116 (1938).

<sup>144</sup> See *supra*, page 11; United States of America, Plaintiff's Exhibit 9.

<sup>145</sup> See Appendix B of Complaint, R. 29, Article 5.



Ahtanum Creek freely and without control into their ditches.<sup>146</sup> To be observed from the testimony alluded to: Neither the United States of America nor the defendants have ever complied with the abortive agreement of May 9, 1908.

*The Trial Court Erred in Stating That the United States of America "encouraged" the Adjudication of the Rights to the Use of Water of the Defendants:*<sup>147</sup> There is not a scintilla of evidence to support that conclusion. To be observed from Appendix C and the exhibits alluded to in that Appendix, the United States of America has at all times denied that it was in any way bound by the State court decree.

*The Trial Court Erred Both in Law and in Fact in Declaring That the United States of America "has not proved possession of any portion of the flow of any water of Ahtanum Creek as appurtenant to any parcel of real property" and "has failed to prove that any portion of the water now used on the north side of Ahtanum Creek was ever used upon Reservation lands from the time of the Treaty of 1855 up to the present time:"*<sup>148</sup> Throughout, the trial court has

<sup>146</sup> R. 505, Testimony of defendants' witness J. R. Rutherford; R. 471 testimony of United States of America, plaintiff's witness George Sargent; R. 509, Testimony of defendants' witness E. J. Shockley.

<sup>147</sup> R. 163, Finding of Fact No. 15.

<sup>148</sup> R. 163, Finding of Fact No. 17. See also the statement in the decision *United States v. Ahtanum Irrigation District, et al.*, 124 F. Supp. 818, 827: "The Government had the burden of establishing either that the Indian wards had had possession of the water right and had been ousted recently by the defendants or that these wards had title thereto and, as a result, the right to immediate possession."

failed to distinguish between the "corpus" of the water and the "usufructuary" rights to the use of water. In this cause the United States of America on behalf of the Yakima Tribe of Indians seeks to quiet its title to the "usufructuary right," an interest in real property, as distinguished from the "corpus" of the waters of Ahtanum Creek. As the Supreme Court of Washington recognizes: "the right to the flow of water to be used upon land \* \* \* is treated as an *incorporeal hereditament* as distinguished from water alone which is *corporeal*."<sup>149</sup> [Emphasis supplied.] There Washington's Supreme Court stated "That water *rights* for use upon the lands are considered appurtenant to the land and, therefore, realty, is declared by our statutes and prior decisions of this court." Having thus declared the basic and underlying principle of Western water law, the court then stated: "\* \* \* we conclude that we are not here dealing with water as personal property \* \* \* but rather with an alleged water right as real property and the [quiet title] action was maintainable by the parties." Earlier the same court had stated that actions to quiet title to rights to the use of water are a proper remedy.<sup>150</sup>

Failure to recognize that the United States of America seeks in the cause to have quieted its title to an incorporeal hereditament is evidenced by the declaration of the trial court that there must be proof of "possession of the flow." Manifestly, "pos-

<sup>149</sup> *Madison v. McNeal*, 171 Wash. 669, 675, 19 P. 2d 97, 99 (1933).

<sup>150</sup> *Spring Hill Irr. Co. v. Lake Irr. Co.*, 42 Wash. 379, 85 Pac. 6, 7 (1906).

session" is not possible in regard to rights to the use of water under the circumstances.

Title to interests of the character here involved may be quieted without pursuing the fiction of first bringing a legal action of ejectment. That conclusion is predicated upon an express statutory declaration which is in part as follows: "Any person having a valid subsisting interest in real property, and a right to the possession thereof may recover the same by an action \* \* \* against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title \* \* \*."<sup>151</sup> Washington's highest court, relying on that statute, has held that it cannot be questioned "that the plaintiff may quiet title and *recover possession* in the same action."<sup>152</sup> [Emphasis supplied.] Under an earlier statute of the same purport Washington's Supreme Court stated. "the statute provides \* \* \* that any person, having a valid, subsisting interest in real property and a right to the possession thereof, may recover the same by action, and may have judgment in such action quieting plaintiff's title. Under this section a person holding the legal title to the real estate with the right of possession may maintain an action to quiet his title."<sup>153</sup>

<sup>151</sup> Remington's Revised Statutes of Washington, Vol. 3, Sec. 785; Revised Codes of Washington, Sec. 7.28.010.

<sup>152</sup> *O'Neal Land Co. v. Judge, et al.*, 196 Wash. 224, 82 P. 2d 535, 536 (1938); *Santmeyer v. Clemmance*, 147 Wash. 354, 266 Pac. 148 (1928).

<sup>153</sup> *White v. McSorley*, 47 Wash. 18, 20, 91 Pac. 243 244 (1907).

Consideration of the cases involving the doctrine of implied reservation as enunciated in the *Winters* case emphasizes the basic error of both law and fact which pervades the disposition made by the trial court of this case. Apparently, with all respect to the trial court, the conclusion appears to be unavoidable that it would require "possession" of the waters as a condition precedent to bringing this action irrespective of the threat of bloodshed; the law does not countenance such a requirement.

**The Trial Court erred throughout its Conclusions of Law and Decision**

*A. Repeatedly the Trial Court States That the United States Failed to Prove That it Was a Trustee of Rights to the Use of Water for the Reservation as a Whole or Appurtenant to any Parcel:*<sup>154</sup> The erroneous concept of the trial court that "possession" of all of the water necessary to irrigate the lands in the Ahtanum Indian Irrigation Project is a condition precedent to the successful prosecution of this cause on behalf of the Yakima Indian Tribe permeates all of the conclusions of law entered by the court. That error of the trial court is fully reviewed in the paragraphs which immediately precede. Certain it is that the law does not require "possession" of the claimed incorporeal hereditaments—the rights to the use of water here involved. There is no authority which would require "possession" as a condition precedent to quieting the title of such an interest in real property. It is thus evident from the record that each

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<sup>154</sup> R. 164, Conclusions of Law Nos. 1, 2, 3 and 4.



and every element essential to prove the rights to the use of water claimed on behalf of the Yakima Indians has not only been agreed upon among the parties,<sup>155</sup> but those facts have likewise been proved beyond question.<sup>156</sup> Ignored by the trial court is the fact that under the doctrine of implied reservation as enunciated in the *Winters* case and reiterated by this Court on numerous occasions, the Indians did not have possession—could not have possession—of the rights which they were asserting. Under the circumstances it is respectfully submitted, therefore, that the United States of America, having proved without objection every requisite fact is entitled to have judgment entered for it on behalf of the Yakima Tribe of Indians pursuant to the doctrine of the *Winters* case.<sup>157</sup>

*B. The Trial Court Erred in Declaring Contrary to the Fact That the United States Did Not Prove That the Defendants Have Interfered With Any Rights to the Use of Water Owned by the Yakima Tribe of Indians:*<sup>158</sup> A half century of struggle, as revealed by Appendix C of this brief and the exhibits alluded to in that Appendix, perforce deny the conclusion thus expressed by the trial court. There is, moreover, set forth above the testimony of Paul F. Henderson, witness for the United States of America, disclosing the irreparable damage experienced by the Yakima Tribe of Indians by reason of the diversions

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<sup>155</sup> Pre-trial Order, R. 123; Appendices A and B of this brief.

<sup>156</sup> See in that connection pages 21 and 22, *supra*.

<sup>157</sup> See R. 123, Pre-trial Order, Agreed Facts; Appendices A and B of this brief, Exhibits of the United States of America.

<sup>158</sup> R. 165, Conclusion of Law No. 5.



of water by the defendants.<sup>159</sup> The recourse to armed guards by the Indians to prevent the diversion of water by the defendants<sup>160</sup> refutes the conclusion that there has been no interference by them. In summary, it may be stated that there is not a scintilla of evidence to support the clearly erroneous statement here under consideration.

C. *The Trial Court Erred in Declaring that "No defendant was required to plead or prove title to land outside the Yakima Indian Reservation or the water right appurtenant thereto or the amount of water used thereon."*<sup>161</sup> The court below, prior to the trial, in denying the motions to dismiss this cause, declared that the proceedings in question are "more in the nature of an action to quiet title. A water right, whether riparian or by appropriation, is real property, and upon this basis the United States might institute such a proceeding. The validity of the right of the United States to the water does not depend, according to the allegations of the complaint, upon the Code agreement but upon the supposed reservation created by the Treaty of 1855."<sup>162</sup> There can be no doubt of the propriety of that ruling. As the court below pointed out, rights to the use of water are real property. "It is as fundamental under the law of

<sup>159</sup> *Supra*, page 8, et seq.

<sup>160</sup> R. 470, testimony of George Sargent; See also United States of America, plaintiff's exhibits 11-1 to 11-146; Appendix C of this brief.

<sup>161</sup> R. 165, Conclusion of Law No. 6.

<sup>162</sup> R. 42.

riparian rights as under the law of appropriation.”<sup>163</sup> Equally in accord with the above quoted ruling of the court below: “An action to quiet title as for real property is proper. And an action to settle rights is one to quiet title to realty.”<sup>164</sup>

Error, however, is patent in the trial court’s conclusion here under consideration that the defendants are not required to plead and prove title to their lands. The rule is well established that: “an allegation that the defendant claims an adverse estate or interest is sufficient, without further defining it, to put him to a disclaimer, or to allegation and proof of the estate or interest which he claims, the nature of which must be known to him, and may not be known to the plaintiff.”<sup>165</sup> In declaring the sufficiency of a complaint of the nature here involved, it has been stated: “\* \* \* the proceeding is for the purpose of stopping the mouth of a person who has asserted or is asserting a claim to the plaintiff’s property, whether such claim be founded upon evidence or utterly baseless. It is not aimed at a particular piece of evidence, but at the pretensions of an individual.” Continuing, the court stated: “\* \* \* the action may be maintained by the owner of property to determine any adverse claim whatever. For if the defendant by his answer disclaims all interest whatever, judgment may,

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<sup>163</sup> Wiel, *Water Rights in the Western States*, 3d ed., vol. 1, Sec. 18, pp. 20–21.

<sup>164</sup> Wiel, *Water Rights in the Western States*, 3d ed., vol. 1, sec. 283, pp. 298–300; Sec. 285, p. 301.

<sup>165</sup> *Ely v. New Mexico & Arizona RR. Co.*, 129 U. S. 291, 293 (1889).

nevertheless, be entered against him, though in such case it must be without cost. \* \* \*

“The plaintiff, therefore, is not required to set forth the nature of the defendant’s claims. \* \* \* The pleading is very simple. And it is well settled that the allegations above mentioned are sufficient.”<sup>166</sup>

Again, it has been declared: “An action to quiet title may be maintained by the owner to determine any adverse claim of the defendant, and the plaintiff in such action is not required to set forth the nature of the defendant’s claim.”<sup>167</sup> In a very recent case California’s Supreme Court reiterated the principle in these terms: “One who alleges that he is the owner of certain described real property, that defendants claim an interest therein adversely to him, that such claim is without right, and that the defendants have no estate, title or interest whatever in said premises or any part thereof pleads all that the law requires in an action to quiet title and, in such an action, the complaint need not particularly state the facts in regard to the asserted invalidity nor attack the instrument which is claimed to be a cloud against the title of the plaintiff.”<sup>168</sup>

The State of Washington’s highest court has adopted the same principles on the subject as those enunciated by the Supreme Court of the United States. It has done so specifically.<sup>169</sup> More recently

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<sup>166</sup> *Castro v. Barry*, 79 Cal. 443, 446, 447, 21 Pac. 946 (1889).

<sup>167</sup> *Thompson, et al. v. Moore, et al.*, 8 Cal. 2d 367, 65 P. 2d 800, 803.

<sup>168</sup> *Ephraim v. Metropolitan Trust Co.*, 28 Cal. 2d 824, 172 P. 2d 501 (1946).

<sup>169</sup> *Watson v. Glover*, 21 Wash. 677, 59 Pac. 516 (1899).

that doctrine was recognized by the Supreme Court of the State of Washington in a case in which claims to the use of water were directly involved.<sup>170</sup> In the leading case in Washington respecting the matter there is quoted with favor this statement from a decision of the Supreme Court of the State of Oregon. There it is stated that a plaintiff “\* \* \* may not know the nature of the ground upon which such adverse claim or interest is asserted—only that such claim to an estate or interest adverse to him is made. \* \* \* He can then commence his suit, and require the nature and character of such adverse estate or interest to be set forth and judicially determined.”<sup>171</sup>

This authoritative declaration summarizes the error of the trial court in regard to that which must be pleaded in an action to quiet title to rights to the use of water. The plaintiff “need not allege that defendant has no right, as any right in defendant is a matter for the defense to plead. \* \* \* plaintiff need allege only the ultimate facts showing his right and acts of defendant which, if unexplained, would be an invasion thereof.”<sup>172</sup>

It is manifest, therefore, that the court below has not only misconceived the basic proposition that the United States of America was not required to prove “possession” of the rights to the use of water asserted for the Yakima Indians, it erred equally in stating that the defendants were not called upon in

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<sup>170</sup> *O’Neal Land Co. v. Judge*, 196 Wash. 224; 82 P. 2d 535, 536 (1938).

<sup>171</sup> *Watson v. Glover*, 21 Wash. 677, 59 Pac. 516, 517 (1889).

<sup>172</sup> 1 *Wiel*, *Water Rights in the Western States*, 3d ed., pages 693, 694.



this cause to set up by answer their claimed rights to the use of water. Noteworthy, however, is the fact that although the defendants did not properly plead their rights, they nevertheless sought to prove them by introducing evidence which they asserted substantiated their claims, entitling them to relief by the trial court.<sup>173</sup>

D. *The Trial Court Consistently Erred Throughout in Its Conclusion That "the State of Washington which then had jurisdiction over the waters of Ahtanum Creek, adjudicated all claims to 75% of the flow of Ahtanum Creek, which proceeding binds the United States and bars any claim to that portion of the flow:"*<sup>174</sup> The trial court erroneously declares that the rights and interests of the Yakima Indians could be adjudicated in a State court which clearly has no jurisdiction over the rights and interests of the Indians.<sup>175</sup> That is patently in error for the United States of America did not appear in the proceeding. Thus it must be concluded in regard to this error of the trial court that [1] the United States made no appearance in the proceeding; [2] no official of the United States was empowered to appear in that proceeding.<sup>176</sup> In view of the fact that the

<sup>173</sup> Defendants' Exhibit 139.

<sup>174</sup> R. 165, Conclusion of Law No. 7. That erroneous conclusion is expressed throughout the trial courts decision, *United States v. Ahtanum Irrigation District, et al.*, 124 F. Supp. 818 (U. S. D. C. E. D. Wash. S. D. 1954).

<sup>175</sup> See *supra*, page 42.

<sup>176</sup> *Arizona v. California*, 298 U. S. 558 (1936); *Stanley v. Schwalby*, 162 U. S. 255 (1895); *Minnesota v. United States*, 305 U. S. 382 (1938); *United States v. McIntire*, 101 F. 2d 650 (C. A. 9, 1939).



rights to the use of water of the Yakima Indians which the United States seeks here to protect were not before the State court, it is respectfully submitted these rights were not subject to it. That conclusion is based upon this declaration by the Supreme Court of the State of Washington: "In the argument submitted in support of the action of the trial court it seems to be assumed that these decrees fix the rights of the parties to the waters of Moses Lake and Crab Creek, not only as between themselves, but as to other and third parties claiming interests adverse to such parties. But a moment's reflection must convince anyone that this view is erroneous. *Although general in form, and broad enough in language to include the whole world, they can have no such effect.* They are binding on the parties to the action and their privies, but upon no one else. As to strangers claiming rights in the waters of the lake the decrees in no manner affect them. The decrees are not even evidence of adverse rights. Strangers may proceed as if the decrees had never been entered." <sup>177</sup> [Emphasis supplied.] Recently the decision last cited and the principle enunciated there were relied upon by the Supreme Court of the State of Washington which restated that fundamental precept in these terms: "A judgment binds only those who are parties to the action in which it is rendered or those who are in privity with such parties, and it does not affect those who are strangers to it." <sup>178</sup>

<sup>177</sup> *State ex rel. McConihe v. Steiner*, 58 Wash. 578, 109 Pac. 57, 60 (1910).

<sup>178</sup> *LaFray v. Seattle*, 12 Wash. 2d 583, 588, 123 P. 2d 345, 347 (1942).

It is thus too clear for question that one of the most basic and far-reaching errors of the trial court was its declaration that the State court proceeding to which the United States was not a party is binding upon it and bars any claim on behalf of the Indians. That conclusion has effectively deprived the Yakima Indians of their day in court, which it is respectfully submitted, is of itself reversible error.

**It was plain and serious error for the Trial Court to declare that the rights to the use of water of the Yakima Indians reserved by them in the Treaty of 1855 are subject to control of the State of Washington**

Another basic error in the decision<sup>179</sup> is the repeated declaration that the laws of the State of Washington control the rights of the Yakima Indians in Ahtanum Creek. As revealed above, the *Winters* decision considered the precise proposition and the court concluded that: "The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. *The United States v. The Rio Grande Ditch & Irrigation Co.*, 174 U. S. 690, 702; *United States v. Winans*, 198 U. S. 371. That the Government did reserve them we have decided, and for a use which would be necessarily continued through years."<sup>180</sup>

Even more pointedly this Court denied the proposition advanced by the trial court that the laws of the State of Washington would be controlling in regard to the rights of the Yakima Indians. On the subject

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<sup>179</sup> *United States v. Ahtanum Irrigation District, et al.*, 124 F. Supp. 818, 824 (D. C. E. D. Wash. S. D. 1954).

<sup>180</sup> *Winters v. United States*, 207 U. S. 564, 577 (1908).

it stated: "The United States became a trustee [for the Indians], holding the legal title to the land and waters for the benefit of the Indians" and "\* \* \* no title to the waters could be acquired by anyone except as specified by Congress."<sup>181</sup> That conclusion simply reiterates the proposition emphasized above that the Indians thus reserved by their Treaty sufficient water from Ahtanum Creek to make habitable their arid lands.

**Subsequent to the Decision of the Trial Court in This Case the Supreme Court of the United States of America Rendered a Decision Diametrically Opposed to the Conclusions Stated by the Trial Court and Thus Reversed Them**<sup>182</sup>

Recently the highest Court considered the precise question of whether the Act of 1866, and the Act of 1870<sup>183</sup> and the Desert Land Act of 1877<sup>184</sup> had application to the Warm Springs Indian Reservation and the streams bordering on that Reservation. Like the Yakima Reservation the one last mentioned was established pursuant to a Treaty of 1855. With infinite clarity our highest Court stated that the Acts last cited related only to "public lands."<sup>185</sup> Then the Court added: "The lands before us [the Warm Springs Indian Reservation] in this case are not 'public lands' but 'reservations'." Our Supreme

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<sup>181</sup> *United States v. McIntire*, 101 F. 2d 650, 653-654 (C. A. 9, 1939).

<sup>182</sup> *Federal Power Commission v. State of Oregon*, 349 U. S. 435 (1954).

<sup>183</sup> 43 U. S. C. 661.

<sup>184</sup> 43 U. S. C. 321.

<sup>185</sup> *Federal Power Commission v. State of Oregon*, 349 U. S. 435, 448 (1954).

Court thus refutes the whole predicate of the decision of the trial court wherein it states that in some manner the United States of America had relinquished the rights to the use of water reserved by the Yakima Tribe of Indians to make habitable their lands, all as contemplated by their Treaty of 1855.

It is respectfully submitted that the decision in *Federal Power Commission v. State of Oregon* discloses the error of the rationale of the trial court necessitating that the latter be reversed. The conclusion expressed that the laws of the State of Washington do not control the rights to the use of water of the Yakima Tribe of Indians is fully supported by the Enabling Act pursuant to which that State became a member of the Union and by the Constitution of the State of Washington.<sup>186</sup>

#### **Unconscionable Waste of the Waters of Ahtanum Creek Results From Trial Court's Judgment of Dismissal**

While the Yakima Indians receive insufficient water from Ahtanum Creek to raise their crops, the defendants flagrantly waste the waters of that stream.

Wasted water from Ahtanum Creek, hub-deep in the highway as encountered by the trial court when it made its thorough on-the-ground inspection;<sup>187</sup>

open canals with neither headgates, weirs or any method to control or measure water, as likewise seen by the trial court;<sup>188</sup>

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<sup>186</sup> See *supra*, page 42.

<sup>187</sup> R. 471, 472, Testimony of George Sargent.

<sup>188</sup> R. 518, Testimony of Charles J. Bartholet, State Supervisor of Water Resources: R. 505, Testimony of J. R. Rutherford.



“use of [uncontrolled] sloughs” and old river beds as ditches;

rank growth of tules, watergrass and cat-tails further evidencing waste;<sup>189</sup>

no efforts to distribute water, “when the creek is up high we get the water;”<sup>190</sup>

those proved facts elicited largely from witnesses of the defendants reveal the methods pursued by the water users north of Ahtanum Creek.

By the unjustified dismissal of the cause the trial court condones the unconscionable waste of water. Sensible control of the limited supply of water in question would go far to resolve the half-century of conflict now before this Honorable Court for review.

**The Agreed Facts and the Proof by the United States of America of the Claims of the Yakima Indians in Ahtanum Creek Preclude a Judgment of Dismissal**

This question is respectfully presented: Upon what basis in law could this case be dismissed?

The United States of America without objection and based upon a stipulation admitting all exhibits, proved the claims of the Yakima Tribe of Indians to the rights to the use of water in Ahtanum Creek concerning which the decree quieting title was prayed.<sup>191</sup> Repeated references to Appendices A and B have been made. Those Appendices are exhibits in the trial of this case, introduced by the United

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<sup>189</sup> R. 471, 472, Testimony of George Sargent.

<sup>190</sup> R. 511, Testimony of E. J. Shockley.

<sup>191</sup> R. 123, Pre-trial Order, Agreed Facts; R. 99, Stipulation admitting exhibits of the United States of America into evidence without objection.



States of America into the record without objection. An examination of those documents by this Honorable Court will reveal that they in themselves, title to the lands being vested in the United States of America as trustee for the Yakima Tribe of Indians, reflect every aspect essential for a decree. Consequently dismissal under the circumstances is contrary to every precept of justice and equity.

Denying that the complaint is in any way insufficient, it is nevertheless observed in view of the proof adduced in the case that the matter is purely academic. For where, as here, a pre-trial order specifying the issues has been entered, a case fully proved, evidence adduced without objection and a trial on the merits concluded, the pleadings are in effect superseded as the pre-trial order entered by the trial court actually discloses.<sup>192</sup> It is specifically recognized by Rule 15, assuming the insufficiency of the complaint, which is denied, proof having been adduced without objection, the pleadings are impliedly amended, "but failure so to amend does not affect the result of the trial of these issues."<sup>193</sup> This Honorable Court has recognized the basic principles of modern jurisprudence reflected in the Federal Rules of Civil Procedure in these terms: "There was \* \* \* admitted without objection evidence that some of the \* \* \* answers were false. Thus the issue of fraud, though not raised by the pleadings, was tried by implied consent of the parties.

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<sup>192</sup> R. 146.

<sup>193</sup> Federal Rules of Civil Procedure, Rule 15 (b). 3 Moore's Federal Practice, 2d ed., page 848.

Accordingly, and properly, the court treated that issue as if it had been raised by the pleadings.<sup>194</sup>

It is abundantly manifest, therefore, that in the light of the proved facts there was no basis in law for the dismissal of this cause by reason of the fact that had the pleadings been inadequate, which is denied, the evidence adduced was more than sufficient to warrant judgment for the United States of America.

**Election by the United States to Stand on Its Proof and Its Pleadings Is Entirely Justified and the Trial Court Erred in Entering Judgment of Dismissal Rather Than a Judgment on the Merits**

This chronicle of events is essential in the consideration of the election by the United States of America to stand on its proof and pleadings.

August 3, 1951, after a full trial on the merits, all parties rested:<sup>195</sup>

Two years and seven months thereafter, on March 9, 1953, there was filed a decision by the trial court;<sup>196</sup>

Immediately after the filing of the decision, on April 13, 1953, the United States of America filed a "Motion to Modify and Clarify Opinion;"<sup>197</sup>

On June 22, 1953, the United States Attorney requested a hearing on the motion last mentioned;<sup>198</sup>

Virtually one year later, on May 4, 1954,<sup>199</sup> the trial

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<sup>194</sup> *United States v. Cushman*, 136 F. 2d 815, 817 (C. A. 9, 1943); cert. denied, 320 U. S. 786 (1943).

<sup>195</sup> R. 567.

<sup>196</sup> 124 F. Supp. 818—Note: Opinion dated March 7, 1953, actually filed with Clerk of the Court March 9, 1953.

<sup>197</sup> R. 157.

<sup>198</sup> R. 168.

<sup>199</sup> R. 169; 124 F. Supp. 818.

court filed an amendment to its opinion of March 9, 1953;

On October 20, 1954,<sup>200</sup> the United States Attorney was directed to contact the trial court in regard to the ultimate disposition of the matter;

On November 9, 1954, the court entered findings of fact, conclusions of law and judgment dismissing the cause on its merits;<sup>201</sup> Motion of the United States of America<sup>202</sup> objected to as not being timely;

January 5, 1955, a timely notice of appeal was filed.<sup>203</sup>

Even subsequent to the notice of appeal the United States of America was in frequent correspondence with the trial court in an effort to rectify what it considered to be a most grievous error.<sup>204</sup> A review of the letters to the trial court stemming from its request in connection with the record in the cause is highly significant.<sup>205</sup> A final order respecting this matter was filed by the trial court on September 6, 1955.<sup>206</sup>

A "Petition for an Injunction Pending Appeal" was filed by defendants November 7, 1955, in the court below. That court ordered the United States of

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<sup>200</sup> R. 169.

<sup>201</sup> R. 159.

<sup>202</sup> R. 167.

<sup>203</sup> R. 199.

<sup>204</sup> In that connection a hearing was held on February 2, 1955, in which the United States of America reiterated and reaffirmed its position that the case had been fully tried and a decree on the merits—not dismissal—was the only appropriate disposition which could be made under the circumstances.

<sup>205</sup> See in that connection letter of March 4, 1955; letter of March 8, 1955, and related documents, R. 188 et seq.

<sup>206</sup> R. 209.

America to answer the petition by December 19, 1955. A motion to dismiss and answer has been filed and a hearing set for January 4, 1956.

A half century of costly, contentious, protracted and bitter conflict over the rights to the use of water of Ahtanum Creek should be concluded by a judgment on the merits—a judgment of dismissal is a manifest injustice under the circumstances. It has been authoritatively declared: “It is \* \* \* the duty of federal courts \* \* \* to provide speedy justice, and *dismissals should be avoided*, if possible, where the court had jurisdiction, a full hearing has been had, and the parties appear to be entitled to some kind of relief which the court can award.”<sup>207</sup>

As Justice Holmes declared “there is a wrong to be righted”<sup>208</sup> and a dismissal does not resolve the issues.

#### CONCLUSION

This Honorable Court, in view of the full trial on the merits in the court below, is requested to reverse the judgment of dismissal, remanding the matter to the trial court so that judgment may be entered in favor of the Yakima Indians quieting their title to the rights to the use of water in Ahtanum Creek and declaring invalid the alleged agreement of May 9, 1908.

UNITED STATES OF AMERICA,  
J. LEE RANKIN,  
*Assistant Attorney General.*

WILLIAM H. VEEDER,  
*Attorney, Department of Justice.*

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<sup>207</sup> 9 Cyc. Fed. Proc., 3d ed. Sec. 29.14, page 102.

<sup>208</sup> *Wisconsin v. Illinois*, 281 U. S. 197 (1929).

## APPENDIX A

## USA—Pl. Ex. 4-e, Pre-trial Order Ex. A

TABULATION SHOWING WATER DIVERSIONS AND IRRIGATED AREAS ALONG AHTANUM CREEK WITHIN BOUNDARY OF YAKIMA INDIAN RESERVATION, WASHINGTON

Allotment No.	Ditch	Dates		Location diversion point of ditch				Total irrigated acreage (maximum)				Irrigable acreage (maximum)				Comments			
		From—	To—	¼ sec.	Sec.	TWP. N.	RA. E.W.M.	No. acres	¼ sec.	Sec.	TWP. N.	RA. E.W.M.	No. acres	¼ sec.	Sec.		TWP. N.	RA. E.W.M.	
820---	M. C. ---	1909	Date	Lot 5---	14	12	16	67.0	SWSE----- SESW----- NENW-----	14	12	17	---	SWSE----- SESW----- NENW-----	14	12	17	---	Original allottee, Felix Emeunot, 1893.
821---	Indiv.---	1885	1894	NE¼---	15	12	17	71.7	NWNE----- NENW----- Lot 7-----	23	12	17	96.6	NWNE----- NENW----- NENW-----	23	12	17	---	Original allottee, "Shaler," 1885.
903---	Yallup---	1870	1895	Lot 6---	16	12	17	58.5	W½L5----- L. 6 and 7---	---	---	---	---	W½L5----- L. 6 and 7---	---	---	---	---	Original allottee, Yallup, 1893.
904---	M. C. ---	1896	1908	Lot 7---	13	12	16	---	NWSE----- NENW----- Lot 8-----	16	12	17	94.5	NWSE----- NENW----- Lot 8-----	16	12	17	---	Original allottee, "Johnnie," 1885.
906---	Govt.---	1896	1908	Lot 7---	13	12	16	55.1	SWSW----- E½L. 5----- Lot 8-----	16	12	17	61.4	SWSW----- E½L. 5----- Lot 8-----	16	12	17	---	Original allottee, Cus-Sun-My 1893.
907---	M. C. ---	1896	1908	Lot 7---	13	12	16	75.5	E½SW----- SESE----- SWSW-----	16	12	17	74.6	E½SW----- SESE----- SWSW-----	16	12	17	---	Original allottee, Agnes Cus-Sun-My, 1893.
908---	M. C. ---	1909	Date	Lot 5---	14	12	16	80	---	---	---	---	---	---	---	---	---	---	Original allottee, Cadia Shike 1893. Patent in Fee No., dated July 13, 1908.



909	Govt.---	1896	1908	Lot 7---	13	12	16	76.8	W $\frac{1}{2}$ SE	16	12	17	---	---	---	---	Thewall Slusecum, 1893. Original allottee Patent in Fee No. 778117 dated Oct. 10, 1920.
	M. C.---	1909	Date	Lot 5---	14	12	16	---	---	---	16	12	17	---	---	---	Original allottee Shilow, prior to 1885.
912	Felix---	1885	1908	Lot 8---	15	12	17	61.5	S $\frac{1}{2}$ L. 5	---	---	---	---	---	---	---	Original allottee, Ah-Hy Shi-Low,
913	M. C.---	1909	Date	Lot 5---	14	12	16	---	NESE	---	---	---	---	---	---	---	Original allottee, "Sonatup" prior to 1893.
916	Indiv.---	1870	1895	NE $\frac{1}{4}$ ---	15	12	17	82.3	N $\frac{1}{2}$ L. 5	---	---	---	---	---	---	---	Original allottee, Sa-Pe-Ah Sloutier, 1903.
	Felix---	1896	1908	Lot 8---	15	12	17	---	W $\frac{1}{2}$ NWSW	---	---	---	---	---	---	---	Original allottee, Swa-Has Sloutier, 1893.
917	M. C.---	1909	Date	Lot 5---	14	12	16	---	Lot 8---	---	---	---	---	---	---	---	Original allottee, Catherine Smartlowat, 1893.
	Felix---	1896	1908	Lot 8---	15	12	17	---	N $\frac{1}{2}$ NWSW	---	---	---	---	---	---	---	Original allottee, Susan Smartlowat, 1893.
918	M. C.---	1909	Date	Lot 5---	14	12	16	---	SWSW	---	---	---	---	---	---	---	Original allottee, Agatha Smartlowat, 1893.
920	Yemowat---	1885	1903	NE $\frac{1}{4}$ ---	14	12	17	87.6	W $\frac{1}{2}$ L. 1	---	---	---	---	---	---	---	Original allottee, T. Smartlowat, 1893.
	do---	1904	1908	NW $\frac{1}{4}$ ---	13	12	17	---	Lot 2---	---	---	---	---	---	---	---	Original allottee, Elizabeth Smartlowat, 1893.
921	M. C.---	1909	Date	Lot 5---	14	12	16	90.4	SE	---	---	---	---	---	---	---	Original allottee, Mary Yemowat, 1893.
922	Felix---	1904	1908	Lot 8---	15	12	17	80.0	S $\frac{1}{2}$ NE	---	---	---	---	---	---	---	Original allottee, Elizabeth Smartlowat, 1893.
923	Yemowat---	1885	1903	NE $\frac{1}{4}$ ---	14	12	17	39.2	NENE	---	---	---	---	---	---	---	Original allottee, Agatha Smartlowat, 1893.
	do---	1904	1908	NW $\frac{1}{4}$ ---	13	12	17	---	---	---	---	---	---	---	---	---	Original allottee, T. Smartlowat, 1893.
924	Yemowat---	1885	1903	NE $\frac{1}{4}$ ---	14	12	17	56.5	L. 5 & 6	---	---	---	---	---	---	---	Original allottee, Elizabeth Smartlowat, 1893.
	do---	1904	1908	NE $\frac{1}{4}$ ---	13	12	17	---	NWNE	---	---	---	---	---	---	---	Original allottee, Mary Yemowat, 1893.
925	M. O.---	1909	Date	Lot 5---	14	12	16	---	---	---	---	---	---	---	---	---	Original allottee, Mary Yemowat, 1893.
	Yemowat---	1904	1908	NW $\frac{1}{4}$ ---	13	12	17	80.0	NWNW	---	---	---	---	---	---	---	Original allottee, Mary Yemowat, 1893.
	M. O.---	1909	Date	Lot 5---	14	12	16	---	NENE	---	---	---	---	---	---	---	Original allottee, Mary Yemowat, 1893.



938---	Lower---	1893	1913	Lot 8---	7	12	18	72.3	W $\frac{1}{2}$ L. 9	4	12	18	---	W $\frac{1}{2}$ L. 9	4	12	18	Original allottee, James Yemowat, 1893.
	M. C.---	1914	Date	Lot 5---	14	12	16	---	NWNE	---	---	---	---	NWNE	---	---	---	
939---	Lower---	1893	1913	Lot 8---	7	12	18	---	W $\frac{1}{2}$ NENE	9	12	18	77.1	W $\frac{1}{2}$ NENE	9	12	18	Original allottee, Josephine Yemowat, 1893.
	M. C.---	1914	Date	Lot 5---	14	12	16	---	L. 5, 10, and 11.	4	12	18	---	L. 5, 10, and 11.	4	12	18	
940---	Lower---	1893	1903	Lot 8---	7	12	18	---	NENW	9	12	18	83.9	NENW	9	12	18	Original allottee, Mary Augustus Yemowat 1893.
	Yemowat.	1904	1908	NW $\frac{1}{4}$ ---	13	12	17	---	E $\frac{1}{2}$ L. 8	7	12	18	---	E $\frac{1}{2}$ L. 8	7	12	18	
	M. C.---	1909	Date	Lot 5---	14	12	16	---	E $\frac{1}{2}$ SESE	---	---	---	---	E $\frac{1}{2}$ SESE	---	---	---	
									W $\frac{1}{2}$ L. 9	---	---	---	---	W $\frac{1}{2}$ L. 9	---	---	---	
									S $\frac{1}{2}$ E $\frac{1}{2}$ L. 9	---	---	---	---	S $\frac{1}{2}$ E $\frac{1}{2}$ L. 9	---	---	---	
942---	Yemowat.	1885	1903	NE $\frac{1}{4}$ ---	14	12	17	80	S $\frac{1}{2}$ NESW	8	12	18	81.3	S $\frac{1}{2}$ NESW	8	12	18	Original allottee, Wm. Yemowat.
	---do---	1904	1908	NW $\frac{1}{4}$ ---	13	12	17	---	S $\frac{1}{2}$ SW	8	12	18	---	S $\frac{1}{2}$ SW	---	---	---	
	M. C.---	1909	Date	Lot 5---	14	12	16	---	Lot 7	---	---	---	---	Lot 7	---	---	---	
943---	Lower---	1893	1908	Lot 8---	7	12	18	47.9	NE $\frac{1}{4}$ L. 9	---	---	---	---	NE $\frac{1}{4}$ L. 9	---	---	---	Original allottee Snatups Kukula Yemowat, 1893.
	M. C.---	1909	Date	Lot 5---	14	12	16	---	N $\frac{1}{2}$ NESW	8	12	18	72	N $\frac{1}{2}$ NESW	8	12	18	
944---	Lower---	1893	1908	Lot 8---	7	12	18	75	Lots 5, 6, and 8	---	---	---	---	Lots 5, 6, and 8	---	---	---	Original allottee, Sappeouke, Patent in Fee No. 744782, issued April 15, 1920.
	M. C.---	1909	Date	Lot 5---	14	12	16	---	---	8	12	18	75.9	---	---	---	---	Original allottee, Wm. Teelas, 1893.
945---	Lower---	1895	Date	Lot 8---	7	12	18	58.3	L. 11 and 12	2	12	18	---	L. 11 and 12	2	12	18	
									Lot 9	3	12	18	---	Lot 9	3	12	18	
									NENW	---	---	---	---	NENW	---	---	---	
									N $\frac{1}{2}$ NWNE	11	12	18	97.8	N $\frac{1}{2}$ NWNE	11	12	18	
946---	---do---	1895	Date	Lot 8---	7	12	18	63.6	E $\frac{1}{2}$ NWNE	---	---	---	---	E $\frac{1}{2}$ NWNE	---	---	---	Original allottee, Ehen Teelas, 1893.
									N $\frac{1}{2}$ NENE	11	12	18	74.9	N $\frac{1}{2}$ NWNE	11	12	18	
									L. 9 and 10	2	12	18	---	L. 9, and 10	2	12	18	

TABULATION SHOWING WATER DIVERSIONS AND IRRIGATED AREAS ALONG AHTANUM CREEK WITHIN BOUNDARY OF YAKIMA INDIAN RESERVATION,  
WASHINGTON—Continued

Allot- ment No.	Ditch	Dates		Location diversion point of ditch				Total irrigated acreage (maximum)				Irrigated acreage (maximum)				Comments
		From	To	1/4 sec.	Sec.	TWP. N	RA. EWM.	No. acres	1/4 sec.	Sec.	TWP. N	RA. EWM.	No. acres	1/4 sec.	Sec.	
947	Lower	1895	1913	Lot 8	7	12	18	80	NENE	10	12	18	---	NENE	---	Original allottee, Jas. Teelas, Patent in Fee No. 706936 issued Sept. 19, 1919
	M. C.	1914	Date	Lot 5	14	12	16	---	NWNW	11	12	18	80	NWNW	11	
951	Govt.	1896	1908	Lot 7	13	12	16	34	Lot 6	---	---	---	---	Lot 6	---	Original allottee, Patent in Fee No. 107386 issued August 30, 1912.
	M. C.	1909	Date	Lot 5	14	12	16	---	SESE	18	12	17	40	SESE	18	
956	Indiv.	1885	1908	Lot 5	14	12	16	8.4	Lot 5	13	12	16	8.4	Lot 5	13	Original allottee, Penape Sapallal, 1893.
960	do.	1885	1908	Lot 5	13	12	16	8	L. 6, 7, 8.	---	---	---	---	L. 6, 7, 8.	---	Original allottee, Cecelia Odet, 1893.
	M. C.	1909	Date	Lot 5	14	12	16	---	NESW	13	12	16	30	NESW	13	
1506	Lower	1895	1911	Lot 8	7	12	18	77.8	NWNW	10	12	18	---	NWNW	10	Original allottee, Dick Wynaco, 1894, Patent in Fee No. 185219 issued Mar. 23, 1911.
	M. C.	1912	Date	Lot 5	14	12	16	---	E1/2NENE	9	12	18	77.8	E1/2NENE	9	
1509	Lower	1895	1913	Lot 8	7	12	18	56.2	E1/2L. 9	4	12	18	77.8	E1/2L. 9	4	Original allottee, Kamosma Wynaco, 1893.
	M. C.	1914	Date	Lot 5	14	12	16	---	NENW	10	12	18	---	NENW	10	
1677	Indiv.	1885	1892	NW1/4	14	12	17	76.6	N1/2SENW	10	12	18	---	N1/2SENW	10	Original allottee, James Untuch, 1894.
	Felix	1893	1908	Lot 8	15	12	17	---	L. 11 and 12	3	12	18	77.7	NWSE	3	
1678	M. C.	1909	1892	Lot 5	14	12	16	---	NWSE	14	12	17	80.9	Lot 6	14	Original allottee, Adeline Untuch, 1894.
	Indiv.	1885	1892	NW1/4	14	12	17	76.7	Lot 5	---	---	---	---	Lot 5	---	
1701	Felix	1893	1909	Lot 8	15	12	17	---	SENE	---	---	---	---	SENE	---	Original allottee, Wab-Lal-Lakite, 1894.
	M. C.	1909	Date	Lot 5	14	12	16	---	N1/2NENE	14	12	17	81	N1/2NENE	14	
1701	Indiv.	1870	1908	SW1/4	17	12	17	49	Lot 7	---	---	---	---	Lot 7	---	Original allottee, Wab-Lal-Lakite, 1894.
	M. C.	1909	Date	Lot 5	14	12	16	---	Lot 8	17	12	17	69.2	Lot 8	17	

1702--	1885	Indiv.---	1855	1908	SE $\frac{1}{4}$ ---	18	12	17	41.9	Lot 5.---	---	---	---	---	Lot 5.---	---	---	---	---	Original allottee, Wah-lal-la-Kite, 1894.
1716--	1899	M. C.---	1899	Date	Lot 5.---	14	12	16	---	Lot 6.---	17	12	17	---	Lot 6.---	17	12	17	---	Original allottee, Thomas Wynaco, 1894.
1808--	1895	Lower.---	1895	1913	Lot 8.---	7	12	18	48.5	W $\frac{1}{2}$ NE.---	10	12	18	---	W $\frac{1}{2}$ NE.---	10	12	18	---	Original allottee, Louis Yensatiwa 1894, Patent in Fee No. 801956 issued Apr. 4, 1921.
1809--	1909	Indiv.---	1895	1908	Lot 5.---	13	12	16	28.5	Lot 10.---	3	12	18	68	Lot 10.---	3	12	18	---	Original allottee, La Hopos Cassiste, 1894.
1810--	1885	M. C.---	1895	1908	Lot 7.---	13	12	16	---	SESW.---	18	12	17	35.8	SESW.---	18	12	17	---	Original allottee, Pt-Ah-Cook-Kac Cassiate, 1894.
1951--	1909	M. C.---	1895	1908	Lot 7.---	13	12	16	---	SESW.---	18	12	17	35.8	SESW.---	18	12	17	---	Original allottee, Joseph Skahan, 1898.
2326--	1904	Yemowat.---	1909	Date	Lot 5.---	14	12	16	---	SESW.---	18	12	17	35.8	SESW.---	18	12	17	---	Original allottee, Joseph Yemowat, 1898.
2327--	1909	M. C.---	1909	Date	Lot 5.---	14	12	16	---	SESW.---	18	12	17	35.8	SESW.---	18	12	17	---	Original allottee, Mary Yemowat, 1893.
2337--	1940	Yemowat.---	1909	Date	Lot 5.---	14	12	16	---	SESW.---	18	12	17	35.8	SESW.---	18	12	17	---	Original allottee, Jennie Yemowat, 1893.
2380--	1909	M. C.---	1909	Date	Lot 5.---	14	12	16	---	SESW.---	18	12	17	35.8	SESW.---	18	12	17	---	Original allottee, Julia Seelatssee.
2616--	1909	M. C.---	1909	Date	Lot 5.---	14	12	16	4.8	SWSW.---	17	12	17	18.6	SWSW.---	17	12	17	---	Original allottee, Isaac Smartlowat, 1905.
2656--	1909	M. C.---	1909	Date	Lot 5.---	14	12	16	40	NENW.---	17	12	18	40	NENW.---	17	12	18	---	Original allottee, George Yemowat, 1905.
2657--	1909	M. C.---	1909	Date	Lot 5.---	14	12	16	40	NWNE.---	17	12	18	40	NWNE.---	17	12	18	---	Original allottee, Elsie Yemowat, 1905.
2683--	1909	M. C.---	1909	Date	Lot 5.---	14	12	16	17	SESW.---	17	12	17	23.3	SESW.---	17	12	17	---	Original allottee, Chamesapum, 1905.
2774--	1909	M. C.---	1909	Date	Lot 5.---	14	12	16	32	SWSE.---	17	12	17	31.7	SWSE.---	17	12	17	---	Original allottee, L. Cassiate, 1905.
2775--	1909	M. C.---	1909	Date	Lot 5.---	14	12	16	37	SESE.---	17	12	17	36.6	SESE.---	17	12	17	---	Original allottee, Celix Cassiate, 1905.
2778--	1905	Lower.---	1905	1913	Lot 8.---	7	12	18	80	SENE.---	---	---	---	---	SENE.---	---	---	---	---	Original allottee, Miko Teelas, 1905.
	1914	M. C.---	1914	Date	Lot 5.---	14	12	16	---	E $\frac{1}{2}$ SWNE.---	---	---	---	---	E $\frac{1}{2}$ SWNE.---	---	---	---	---	Original allottee, Miko Teelas, 1905.



TABULATION SHOWING WATER DIVERSIONS AND IRRIGATED AREAS ALONG AHTANUM CREEK WITHIN BOUNDARY OF YAKIMA INDIAN RESERVATION,  
WASHINGTON—Continued

Allot- ment No.	Ditch	Dates		Location diversion point of ditch				Total irrigated acreage (maximum)				Irrigable acreage (maximum)				Comments		
		From—	To—	¼ sec.	Sec.	TWP. N	RA. E.W.M.	No. acres	¼ sec.	Sec.	TWP. N	RA. E.W.M.	No. acres	¼ sec.	Sec.		TWP. N	RA. E.W.M.
2779..	Lower..... M. C.....	1905 1913	1913 Date	Lot 8.... Lot 5....	7 14	12 12	18 16	71.3	W½SWNE SENW					W½SWNE SENW				Original allottee, Phillis Yantow- meonwit, Patent in Fee issued December 22, 1910.
2785..	M. C.....	1915	Date	Lot 5....	14	12	16	67.5	E½SWNW E½ L. 2.... L. 6, 7, 8....	11 12 7	12 12 19	18 18 19	80 96.7	E½SWNW E½ L. 2.... L. 6, 7, 8.... S½SWNW	11 12 7	12 12 19	18 18 19	Original allottee, John Pims, 1905.
2787..	M. C.....	1915	Date	Lot 5....	14	12	16	64.5	S½SWNW W½ L. 2.... Lot 9.....					W½ L. 2.... Lot 9.....	12 1 1	12 12 18	18 18 18	Original Allottee, Ike Isaacs, Patent in Fee, No. 615515 dated Jan. 30, 1918, issued for S½NE- NW; Patent in Fee No. 633030; June 4, 1918 for Lot 9.
2788..	Lower..... M. C.....	1905 1915	1914 Date	Lot 8.... Lot 5....	7 14	12 12	18 16	40 40	SWNW SWNW	12 12	12 12	18 18						Original Allottee, John Skahan 1905, Patent in Fee No. 768397 issued Aug. 19, 1920.
2789..	M. C.....	1915	Date	Lot 5....	14	12	16	80	SWNE SENW					SWNE SENW				Original Allottee, Antoine Ska- han, 1905.
2794..	M. C.....	1909	Date	Lot 5....	14	12	16	24	NW	21	12	17	29.2	NW	21	12	17	Original allottee, Metella Pims, 1905.
2886..	Yemowat.. M. C.....	1904 1909	1908 Date	NW¼.... Lot 5....	13 14	12 12	17 16	40	SWSE	8	12	18	40	SWSE	8	12	18	Original allottee, Hattie John, 1905.
3074..	Lower..... M. C.....	1893 1909	1908 Date	Lot 8.... Lot 5....	7 14	12 12	18 16	66	SWNW Lot 2....					SWNW Lot 2....				Original allottee, William Samp- son, 1905.
3075..	M. C.....	1914	Date	Lot 5....	14	12	16	77.5	SWNE SENW	9	12	18	73.6	SWNE SENW	9	12	18	Original Allottee, Sumpatci Samp- son, 1905.
3151..	M. C.....	1909	Date	Lot 5....	14	12	16	56	SENW SWNE	17	12	18	56.5	SENW SWNE	17	12	18	Original Allottee, Andrew Foster, 1908.

3342..	M. C. ....	1909	Date	Lot 5...	14	12	16	23.1	NWNE& W $\frac{1}{2}$ NENE& W $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$ of NENE	21	12	17	23.2	NWNE& W $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$ of NENE	21	12	17	Original allottee, Josephine Phillips, 1910.
3343..	M. C. ....	1911	Date	Lot 5...	14	12	16	38.4	E $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$ NE NE&E $\frac{1}{2}$ E $\frac{1}{2}$ NENE	21	12	17	21	E $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$ NE NE&E $\frac{1}{2}$ E $\frac{1}{2}$ NENE	21	12	17	Original allottee, David Slusecum, 1910.
3345..	M. C. ....	1910	Date	Lot 5...	14	12	16	35	NWNW&W $\frac{1}{2}$ W $\frac{1}{2}$ NENW& W $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ NENW	22	12	17	25.2	NWNW&W $\frac{1}{2}$ W $\frac{1}{2}$ NENW& W $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ NENW	22	12	17	Original Allottee, Mabel Edwards 1910.
3344..	M. C. ....	1911	Date	Lot 5...	14	12	16	29	SESE&S $\frac{1}{2}$ S $\frac{1}{2}$ NENE NWNW&E $\frac{1}{2}$ NENW&E $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ of NENW	14	12	17	23.3	SESE&S $\frac{1}{2}$ S $\frac{1}{2}$ NENE NWNW&E $\frac{1}{2}$ NENW&E $\frac{1}{2}$ E $\frac{1}{2}$ W $\frac{1}{2}$ of NENW	14	12	17	Original allottee, David Slusecum, 1910.
3346..	M. C. ....	1910	Date	Lot 5...	14	12	16	25.7	S $\frac{1}{2}$ SW	13	12	17	31.3	S $\frac{1}{2}$ SW	13	12	17	Original allottee, Ava Smartlowat, 1910.
3348..	M. C. ....	1911	Date	Lot 5...	14	12	16	28.4	Lot 3	18	12	18	36.7	Lot 3	18	12	18	Effie Dick, 1910.
3349..	M. C. ....	1911	Date	Lot 5...	14	12	16	29.8	NESW&W $\frac{1}{2}$ W $\frac{1}{2}$ NWSE	18	12	18	24.9	NESW&W $\frac{1}{2}$ W $\frac{1}{2}$ NWSE	18	12	18	Original allottee, Peter Smartlowat, 1910.
3351..	M. C. ....			Lot 5...	14	12	16	0					5	NWSW E $\frac{1}{2}$ NENE	17	12	18	Original allottee, Annie Mann, 1910.
3352..	M. C. ....	1911	Date	Lot 5...	14	12	16	40	SENE	18	12	18	40	SENE	18	12	18	Original allottee, Oscar Yapwishmet, 1910.
3353..	M. C. ....	1911	Date	Lot 5...	14	12	16	40	SWNW	17	12	18	39	SWNW	17	12	18	Original allottee, Pauline Yapwishmet, 1910; Patent in Fee No. 732,754 issued Feb. 4, 1920.
3354..	M. C. ....	1911	Date	Lot 5...	14	12	16	17.5	W $\frac{1}{2}$ NW	16	12	18	13.3	W $\frac{1}{2}$ NW	16	12	18	Original allottee, Alex Yemowat, 1910.
3355..	M. C. ....			Lot 5...	14	12	16	0					8.7	SESW E $\frac{1}{2}$ SW	9	12	18	Original allottee, Josephine Yemowat, 1910.
3356..	M. C. ....	1914	Date	Lot 5...	14	12	16	27.9	NESW	9	12	18	31.3	NESW	9	12	18	Original allottee, Cataline Watlamat, 1910.

TABULATION SHOWING WATER DIVERSIONS AND IRRIGATED AREAS ALONG AHTANUM CREEK WITHIN BOUNDARY OF YAKIMA INDIAN RESERVATION,  
WASHINGTON—Continued

Allotment No.	Ditch	Dates		Location diversion point of ditch				Total irrigated acreage (maximum)				Irrigable acreage (maximum)				Comments		
		From—	To—	¼ sec.	Sec.	TWP. N	RA. E.W.M.	No. acres	¼ sec.	Sec.	TWP. N	RA. E.W.M.	No. acres	¼ sec.	Sec.		TWP. N	RA. E.W.M.
3357..	M. C. ....	1914	Date	Lot 5...	14	12	16	37.0	SENE.....	9	12	18	33.3	SENE.....	9	12	18	Original allottee, Augustus Mann, 1910.
3358..	M. C. ....	1914	Date	Lot 5...	14	12	16	39.0	S½SENW& SWNW.	10	12	18	33.5	S½SENW& SWNW.	10	12	18	Original allottee, Christine Mann, 1910.
3359..	M. C. ....	1914	Date	Lot 5...	14	12	16	44	NESW.....	10	12	18	46.7	NESW.....	10	12	18	Original allottee, Helen Bradley, 1910.
3360..	M. C. ....	1914	Date	Lot 5...	14	12	16	51	SENE.....	10	12	18	52.6	SENE.....	10	12	18	Original allottee, Anna P. Bradley, 1910.
3361..	Lower.....	1914	Date	SE¼....	7	12	18	55	NESW&N½	11	12	18	64.1	NESW&N½	11	12	18	Original allottee, Mary Langell, 1910.
3362..	M. C. ....	1914	Date	Lot 5...	14	12	16	40	W½SWNW..	11	12	18	33.9	W½SWNW..	11	12	18	Original allottee, Mark Wilcox, 1910; Patent in Fee No. 605,984, Nov. 12, 1917.
3364..	M. C. ....	1915	Date	Lot 5...	14	12	16	35.7	NWSW.....	12	12	18	31.4	NWSW.....	12	12	18	Original allottee, Ruby Wilcox, 1910.
3365..	M. C. ....	1915	Date	Lot 5...	14	12	16	53	NWSE.....	12	12	18	53	NWSE.....	12	12	18	Original allottee, George Eaton, 1910; Patent in Fee No. 882,763 dated Oct. 11, 1922.
3366..	M. C. ....	1915	Date	Lot 5...	14	12	16	68.6	NESE.....	12	12	18	69.4	NESE.....	12	12	18	Original allottee, Josephine Skahan, 1910.
3469..	M. C. ....	1915	Date	Lot 5...	14	12	16	38	SENE..... Lots 11, 12	7	12	19	37.7	SENE..... Lots 11, 12	7	12	19	Original allottee, Lorona Langell, 1910; Patent in Fee No. 605,985, Nov. 2, 1917.
3627..	M. C. ....	-----	-----	Lot 5...	14	12	16	0	-----	-----	-----	-----	1.9	NESW.....	17	12	18	Original allottee, Thomas Yemowat, 1910.

3946..	M. C.....	-----	-----	Lot 5...	14	12	16	0	-----	-----	-----	40.4	W $\frac{1}{2}$ SE.....	9	12	18	Original allottee, Roza Yemowat, 1910.	
3924..	M. C.....	-----	-----	Lot 5...	14	12	16	0	-----	-----	-----	16.5	E $\frac{1}{4}$ SE $\frac{1}{4}$ .....	9	12	18	Original allottee, Andy Grant, 1910.	
3925..	M. C.....	-----	-----	Lot 5...	14	12	16	0	-----	-----	-----	9.0	W $\frac{1}{2}$ SW.....	10	12	18	Original allottee, Big John Qualeight, 1910; Patent in Fee No. 745,277, dated Apr. 16, 1920.	
4005..	M. C.....	1914	Date	Lot 5...	14	12	16	4.8	W $\frac{1}{2}$ S $\frac{1}{2}$ of NWSW.	11	12	18	4.8	W $\frac{1}{2}$ S $\frac{1}{2}$ of NWSW.	11	12	18	Original allottee, Cassie Langell, 1910; Patent in Fee No. 1,121,285, Sept. 18, 1916.
4122..	M. C.....	1915	Date	Lot 5...	14	12	16	40	NESE.....	11	12	18	40	NESE.....	11	12	18	Original allottee, Georgina Wilcox, 1910.
4319..	M. C.....	-----	-----	Lot 5...	14	12	16	0	-----	-----	-----	10	E $\frac{1}{2}$ NWSE.....	-----	-----	-----	Original allottee, Helen Yemowatt,	
Trib- al.	M. C.....	-----	-----	Lot 5...	14	12	16	0	-----	-----	-----	5.5	W $\frac{1}{2}$ NESE..... E $\frac{1}{2}$ W $\frac{1}{2}$ of NWSE.	18	12	18		
Total.	-----	-----	-----	-----	-----	-----	5122	-----	-----	-----	-----	5748.3	-----	-----	-----	-----	-----	

## ISOLATED ALLOTMENTS ABOVE NARROWS

Allot- ment No.	Ditch	Dates		Location diversion point of ditch			Total irrigated acreage (maximum)						Irrigable acreage (maximum)					Comments.			
		From	To	1/4 sec.	Sec.	TWP. N	RA. E.W.M.	No. acres	1/4 sec.	Sec.	TWP. N	RA. E.W.M.	No. acres	1/4 sec.	Sec.	TWP. N	RA. E.W.M.				
914	No. 4	1885	Date	Lot 5	17	12	16	6	Lot 8				17	12	16	42	Lot 8	17	12	16	Original allottee, Josephine Shi- low, 1893.
962	No. 5	1888	Date	Lot 7	16	12	16	11	Lots 7 and 10				15	12	16	41	Lot 7	15	12	16	Original allottee, Charles Tomas- kan, 1893.
964	No. 5	1888	Date	Lot 7	16	12	16	10	Lots 5, 6, 11, 12				15	12	16	38	Lots 5, 6, 11, 12	15	12	16	Original allottee, Liza Tomas- kan, 1893.
965	No. 5	1888	Date	Lot 7	16	12	16	27	Lot 8				15	12	16	27	Lot 8	15	12	16	Original allottee, Emma Tomas- kan, 1893.
967	No. 3	1870	Date	Lot 10	18	12	16	8	Lot 9				18	12	16	26	Lot 9	18	12	16	Original allottee, Thomas Smart- lowat, 1893.
969	No. 3	1870	Date	Lot 10	18	12	16	16.7	Lot 8				18	12	16	24	Lot 8	18	12	16	Original allottee, Seymour Smart- lowat, 1893.
970	No. 1	1870	Date	Lot 6	24	12	15	27.6	Lots 7, 8				24	12	15	40	Lots 7, 8	24	12	15	Original allottee, Um-Ship-Um Twi-Wash, 1893; Patent in Fee No. 148,735 and No. 42,722-8, Oct. 12, 1908.
971	No. 1	1893	Date	Lot 6	24	12	15	37.4	Lots 10, 11				18	12	16		Lots 10, 11	18	12	16	Original allottee, Charlie Tomas- kan, 1885.
	No. 2	1870	Date	Lot 11	18	12	16		Lot 5				19	12	16	79	Lot 5	19	12	16	
973	No. 3	1870	Date	Lot 10	18	12	16	7	Lot 5				17	12	16	7	Lot 5	17	12	16	Original allottee, Pat Yowan, 1893.
Total								150.7								324					



# APPENDIX B

## USA—Pl. Ex. 4-e, Pre-trial Order Ex. B.

STREAM FLOW NORTH FORK AHTANUM CREEK, YAKIMA INDIAN RESERVATION, WASHINGTON, FROM OFFICIAL RECORDS OF U. S. GEOLOGICAL SURVEY

Year	April			May			June			July			August			September		
	Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet	
		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.
1947-----	6,680	192	61	13,270	295	165	6,790	204	57	2,280	54	26	1,230	24	18	1,100	45	13
1946-----	5,390	191	37	13,540	309	119	9,040	216	95	3,570	100	33	1,440	33	18	994	21	14
1945-----	3,840	114	29	8,930	207	88	5,570	179	42	1,470	40	17	889	19	12	798	17	11
1944-----	2,720	76	26	5,280	119	61	3,060	93	23	1,080	23	13	733	17	9	575	12	8
1943-----	10,580	279	125	10,370	312	100	11,890	248	152	5,700	181	41	2,060	42	26	1,270	25	19
1942-----	7,940	174	90	8,800	242	88	6,290	160	67	2,310	63	24	1,080	24	14	803	14	12
1941-----	6,660	154	84	6,540	148	83	3,540	83	35	1,260	34	15	922	21	13	803	20	12
1940-----	6,760	148	76	10,310	218	131	4,850	137	38	1,580	36	20	974	20	14	823	18	12
1939-----	4,900	113	63	6,790	152	87	3,590	89	38	1,360	36	14	829	15	12	723	13	9
1938-----	11,640	348	67	17,390	401	193	12,420	303	124	3,890	113	37	1,760	37	21	1,150	24	16
1937-----	5,280	178	41	11,180	243	118	9,870	241	110	3,150	104	29	1,410	37	18	1,150	36	16
1936-----	6,740	211	18	12,270	285	145	6,680	213	52	2,060	50	22	1,060	22	14	895	19	14
1935-----	5,900	168	52	12,900	266	165	10,080	255	90	3,200	85	33	1,500	34	19	996	19	15
1934-----	10,950	250	125	8,720	168	116	4,260	107	41	1,840	38	22	1,110	27	11	970	22	12
1933-----	6,130	286	44	9,780	313	86	16,700	403	200	6,890	202	49	2,100	51	25	1,370	26	20
1932-----	5,610	160	61	11,600	240	131	9,100	206	81	2,790	76	29	1,310	28	17	898	17	13
1931-----	3,620	176	36	7,260	214	51	2,260	61	29	1,060	28	12	640	12	9	569	12	7
1930-----	-----	-----	-----	7,007	166	86	4,142	110	41	1,599	40	17	950	18	13	760	17	11
1929-----	-----	-----	-----	8,551	250	64	6,512	152	63	2,279	58	22	1,081	23	13	768	15	12
1928-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	2,287	60	25	1,190	25	16	893	16	13
1927-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	1,924	43	25	1,517	29	20
1926-----	-----	-----	-----	5,078	142	51	2,071	51	18	879	18	11	617	12	8	460	-----	-----
1925-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	2,535	63	29	-----	-----	-----	-----	-----	-----

STREAM FLOW NORTH FORK AHTANUM CREEK, YAKIMA INDIAN RESERVATION, WASHINGTON., FROM OFFICIAL RECORDS OF U. S. GEOLOGICAL SURVEY

Year	April			May			June			July			August			September		
	Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet	
		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.
1924.....	-----	-----	-----	10,400	286	92	3,360	92	32	1,440	30	18	990	18	13	809	16	12
1923.....	-----	-----	-----	-----	-----	-----	12,000	379	81	5,130	176	42	1,950	42	23	1,140	24	16
1922.....	-----	-----	-----	-----	411	-----	-----	-----	-----	2,760	77	31	1,430	30	17	1,020	25	11
1921.....	9,280	190	117	18,800	480	186	18,400	480	186	5,480	177	42	1,860	41	23	1,320	25	20
1920.....	2,700	70	27	6,820	173	68	5,080	122	54	1,910	56	19	1,060	27	15	1,040	29	14
1919.....	-----	-----	-----	11,600	331	124	8,570	193	96	3,440	94	32	1,580	32	22	1,390	31	20
1918.....	-----	-----	-----	9,840	238	108	9,040	263	62	2,320	56	27	1,480	28	19	1,120	22	18
1917.....	2,600	76	20	12,200	376	63	16,600	382	215	6,950	220	47	2,000	45	25	1,380	33	19
1916.....	-----	-----	-----	17,600	-----	-----	24,900	-----	-----	13,900	-----	-----	3,730	-----	-----	2,050	40	30
1915.....	9,940	244	133	9,120	178	111	4,810	126	40	1,840	39	22	1,160	24	16	946	18	14
1914.....	13,300	321	82	15,300	307	212	9,340	275	92	3,350	92	33	1,540	32	21	1,380	39	20
1913.....	6,550	178	40	13,300	388	122	14,300	427	143	5,450	138	42	1,940	40	25	1,560	46	23
1912.....	10,500	272	145	23,700	629	197	12,100	367	92	3,060	92	33	1,730	37	21	1,480	41	21
1911.....	7,560	272	87	9,590	272	106	12,900	411	103	3,490	103	31	1,110	31	22	1,310	-----	-----
1910.....	13,200	-----	-----	15,100	-----	-----	7,440	215	68	2,710	62	23	1,330	23	17	1,680	31	23
1909.....	-----	-----	-----	-----	-----	-----	11,200	361	116	3,700	108	35	1,760	35	24	1,270	26	14
1908.....	-----	-----	-----	8,790	-----	-----	-----	252	122	5,400	155	44	2,020	44	27	1,340	27	20
1907.....	-----	-----	-----	-----	172	107	10,300	-----	-----	-----	-----	-----	-----	-----	-----	1,610	27	27

Year	April			May			June			July			August			September		
	Sec. feet		Total (acre-feet)	Sec. feet		Total (acre-feet)	Sec. feet		Total (acre-feet)	Sec. feet		Total (acre-feet)	Sec. feet		Total (acre-feet)	Sec. feet		Total (acre-feet)
	Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.	
1947-----	45	16	1,670	66	44	1,710	44	15	687	14	9	456	9	6	406	27	6	
1946-----	40	14	1,490	77	26	2,260	59	25	920	23	10	496	10	7	387	10	6	
1945-----	27	10	996	40	23	1,980	36	11	503	11	6	352	7	5	263	5	5	
1944-----	17	10	746	24	15	749	19	9	384	8	5	266	5	4	220	4	3	
1943-----	92	37	3,540	89	26	3,770	85	43	1,510	41	14	733	15	10	500	10	8	
1942-----	47	25	2,140	64	22	1,510	38	15	646	14	8	416	8	6	331	6	5	
1941-----	29	18	1,380	29	17	657	16	8	366	8	5	311	9	5	278	6	4	
1940-----	32	20	2,280	45	26	939	27	9	445	9	6	290	6	4	256	5	4	
1939-----	25	14	1,810	34	24	857	24	9	411	9	5	270	5	4	226	5	3	
1938-----	124	26	4,200	102	44	2,950	74	23	948	23	11	538	11	7	398	8	6	
1937-----	101	19	2,810	60	31	2,210	55	24	792	25	8	418	8	5	360	8	5	
1936-----	46	6	2,950	76	30	1,710	52	14	613	14	6	353	7	5	343	7	5	
1935-----	43	20	3,480	74	42	2,620	71	22	887	21	11	546	11	7	408	7	6	
1934-----	76	35	2,230	54	24	958	24	12	524	11	7	352	8	5	314	7	4	
1933-----	62	15	2,280	72	24	4,290	110	44	1,400	39	13	664	14	9	474	9	7	
1932-----	32	17	2,830	58	34	1,890	43	17	769	17	9	490	10	7	374	7	6	
1931-----	29	8	1,340	36	10	548	20	7	312	7	4	219	4	3	220	4	3	
1930-----	33	17	1,522	29	20	780	19	9	448	9	6	277	6	3	224	5	4	
1929-----	18	9	1,786	52	15	1,332	32	12	536	11	6	325	6	4	324	5	4	
1928-----						1,511	44	15	640	16	8	473	9	6	377	7	6	
1927-----												679	13	10	570	11	8	
1926-----				31	11	498	11	6	302	6	3	206	4	3	199	4	3	
1925-----				83	29	1,511	40	18	761	18	9	425	8	6				
1924-----				60	24	2,470	21	10	432	9	5	311	5	4	265	5	4	
1923-----				90	35	2,690	67	27	1,440	37	15	707	15	9	464	9	8	
1922-----				131	28	3,870	144	21	775	18	10	493	10	6	358	7	5	
1921-----				144	31	4,980	151	35	1,200	32	13	621	13	8	491	9	8	
1920-----				33	17	994	21	11	476	11	5	316	7	4	309	9	5	

STREAM FLOW SOUTH FORK AITANUM CREEK, YAKIMA INDIAN RESERVATION, WASHINGTON., FROM OFFICIAL RECORDS OF U. S. GEOLOGICAL SURVEY

Year	April			May			June			July			August			September		
	Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet		Total (acre- feet)	Sec. feet	
		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.		Max.	Min.
1919.....	2,230	59	23	2,980	84	33	1,800	46	18	744	18	9	464	9	6	395	8	6
1918.....	.....	.....	.....	2,530	50	35	1,900	47	16	713	20	9	528	11	7	389	7	6
1917.....	946	26	9	2,670	94	21	3,830	90	42	1,280	40	12	595	12	8	506	10	8
1916.....	5,260	.....	.....	6,632	.....	.....	6,660	203	76	3,390	92	26	1,140	25	14	762	15	11
1915.....	2,540	62	33	1,900	36	26	1,040	25	11	561	11	7	408	8	5	306	6	4

  

SOUTH FORK OF AITANUM RIVER—SHANNAFELT RANCH																		
1914.....	5,660	125	52	6,580	154	67	2,510	70	21	652	20	6	351	7	4	317	6	4
1913.....	2,170	55	14	4,140	153	25	4,670	142	35	990	34	8	449	8	6	416	8	7
1912.....	2,150	52	27	3,160	74	27	1,740	42	13	688	15	7	460	9	6	371	9	5
1911.....	1,340	45	15	1,700	43	19	2,750	113	20	652	19	6	220	6	1	296	12	1
1910.....	3,770	124	38	5,340	148	44	1,560	42	17	658	16	8	357	8	4	333	6	4
1909.....	1,800	43	20	2,500	61	26	3,120	150	18	521	15	5	304	5	4	257	5	4
1908.....	.....	.....	.....	3,520	73	45	4,470	120	32	1,570	32	15	695	15	9	540	11	8

STREAM FLOWS AND CANAL DIVERSIONS, AHTANUM IRRIGATION SYSTEM, YAKIMA INDIAN RESERVATION, WASHINGTON, FROM OFFICIAL RECORDS OF  
WATATO IRRIGATION PROJECT

79

Years	Irrigated area	April			May			June			July			August			September		
		Total flow (acre-feet)	Per- cent	Total diversion (acre-feet)	Total flow (acre-feet)	Per- cent	Total diversion (acre-feet)	Total flow (acre-feet)	Per- cent	Total diversion (acre-feet)	Total flow (acre-feet)	Per- cent	Total diversion (acre-feet)	Total flow (acre-feet)	Per- cent	Total diversion (acre-feet)	Total flow (acre-feet)	Per- cent	Total diversion (acre-feet)
1947	4 048	8,350	2,842	34	16,520	5,262	32	8,500	4,130	48	2,967	982	33	1,686	575	34	1,506	479	32
1946	4,426	6,880	1,581	23	16,660	4,975	45	11,300	4,745	42	4,490	1,916	43	1,936	872	45	1,381	380	28
1945	4,612	4,836	1,712	35	10,910	4,937	40	6,840	3,779	55	1,973	884	45	1,241	513	41	1,091	449	41
1944	4,724	3,466	2,084	60	6,530	2,592	40	3,809	1,524	40	1,464	504	34	999	307	31	795	278	35
1943	4,665	14,120	971	7	13,270	4,417	33	15,660	4,624	30	7,210	3,003	42	2,793	972	35	1,770	720	41
1942	4,719	10,080	2,715	27	11,000	4,498	41	7,770	3,618	47	2,956	976	33	1,496	551	37	1,134	451	40
1941	4,678	8,040	2,908	36	7,910	2,670	34	4,197	1,702	41	1,626	607	37	1,233	368	30	1,081	358	33
1940	4,655	8,300	3,273	39	12,590	4,737	38	5,789	2,680	46	2,025	579	29	1,264	398	31	1,079	365	34
1939	4,157	5,970	1,905	32	8,600	2,989	35	4,447	1,785	40	1,771	575	32	1,099	345	31	949	306	32
1938	4,562	15,330	807	6	21,590	4,746	21	15,370	4,467	29	4,838	1,775	37	2,398	603	26	1,548	446	29
1937	4,436	7,660	577	8	13,990	4,569	33	12,080	4,125	34	3,942	1,597	41	1,828	488	27	1,510	488	32
1936	3,980	8,400	2,086	25	15,220	4,590	30	8,390	3,090	37	2,673	757	28	1,413	430	30	1,238	468	38
1935	4,094	7,710	2,315	30	16,380	4,686	29	12,700	4,344	34	4,087	1,464	36	2,046	565	28	1,404	476	34
1934	4,050	14,180	4,237	30	10,950	4,655	43	5,218	2,001	38	2,364	694	29	1,462	375	26	1,284	351	27
1933	3,404	7,890	1,262	16	12,060	4,467	37	20,990	5,062	24	8,200	3,328	40	2,764	652	24	1,844	488	26
1932	3,799	7,010	2,091	30	14,430	4,620	32	10,990	4,066	37	3,559	1,059	30	1,800	520	29	1,272	365	29
1931	4,344	4,382	1,477	34	8,600	2,867	33	2,808	912	32	1,372	391	28	859	217	25	789	130	16
1930	4,488	(1)			8,529			4,922			2,047			1,227			984		
1929	4,515	(1)			10,337			7,844			2,815			1,406			1,092		
1928	4,529	(1)									2,927			1,663			1,270		
1927	4,556	(1)												2,603			2,087		
1926	4,447	(1)			6,157			2,569			1,181			823			659		
1925	4,757	(1)						3,296			3,296			939					
1924	4,655	(1)			12,870			4,199			1,872			1,301			1,074		
1923	4,719	(1)									6,570			2,657			1,604		

1 No records.



STREAM FLOWS AND CANAL DIVERSIONS AHANTUM IRRIGATION SYSTEM YAKIMA INDIAN RESERVATION.—WASHINGTON, FROM OFFICIAL RECORDS OF WATATO IRRIGATION PROJECT

Years	Irrigated area	April		May		June		July		August		September	
		Total flow (acre-feet)	Per-cent	Total flow (acre-feet)	Per-cent	Total flow (acre-feet)	Per-cent	Total flow (acre-feet)	Per-cent	Total flow (acre-feet)	Per-cent	Total flow (acre-feet)	Per-cent
1922	4,731	( <sup>1</sup> )	---	15,590	---	15,870	---	3,535	---	1,926	---	1,378	---
1921	4,250	11,810	9	24,160	4,675	23,380	4,378	6,680	3,315	2,481	1,148	1,811	850
1920	4,681	3,474	50	8,390	3,792	6,074	2,668	2,386	983	1,376	515	1,349	421
1919	4,351	( <sup>1</sup> )	---	14,580	---	10,370	---	4,184	---	2,044	---	1,785	---
1918	( <sup>1</sup> )	( <sup>1</sup> )	---	12,370	---	10,940	---	3,033	---	2,008	---	1,509	---
1917	3,854	3,546	8	14,870	3,199	20,430	2,736	8,230	2,813	2,595	1,310	1,886	57
1916	( <sup>1</sup> )	---	---	24,232	---	31,560	---	17,290	---	4,870	---	2,812	---
1915	3,100	12,480	12	11,020	3,047	5,850	2,378	2,401	1,163	1,568	629	1,252	41
1914	( <sup>1</sup> )	18,960	( <sup>1</sup> )	21,880	---	11,850	---	4,002	---	1,891	---	1,697	---
1913	( <sup>1</sup> )	8,720	( <sup>1</sup> )	17,440	---	18,970	---	6,440	---	2,389	---	1,976	---
1912	3,000	12,650	( <sup>1</sup> )	26,860	---	13,840	---	3,718	---	2,190	---	1,851	---
1911	3,000	8,900	( <sup>1</sup> )	11,290	---	15,650	---	4,142	---	1,330	---	1,606	---
1910	1,811	16,970	( <sup>1</sup> )	20,440	---	9,000	---	3,368	---	2,064	---	2,013	---
1909	( <sup>1</sup> )	---	---	---	---	14,320	---	4,221	---	2,715	---	1,527	---
1908	( <sup>1</sup> )	---	---	---	---	14,770	---	6,970	---	---	---	1,880	---
1907	( <sup>1</sup> )	---	---	12,310	---	---	---	---	---	---	---	---	---

1 No records.

## APPENDIX C

### EXHIBITS

#### *Plaintiff's Exhibit 1*

Treaty between the United States and the Yakima Indians, signed at the Treaty Ground, Camp Stevens, Walla Walla Valley on June 9, 1855 (Indian Treaty No. 290); together with a Record of the official proceedings at the Council in the Walla Walla Valley, held jointly by Isaac I. Stevens, Governor and Superintendent Washington Territory and Joel Palmer, Superintendent Indian Affairs Oregon Territory on the part of the United States with the tribes of Indians named in the Treaties made at that Council, June 9th and 11th, 1855.

#### *Plaintiff's Exhibit 1-a*

Mimeographed copy of "A true copy of the Record of the official proceedings at the Council in the Walla Walla Valley, held jointly by Isaac I. Stevens Gov. & Supt. W. T. and Joel Palmer Supt. Indian Affairs O. T., on the part of the United States with the Tribes of Indians named in the Treaties made at that Council. June 9th and 11th, 1855".

#### *Plaintiff's Exhibit 2-a-1*

A letter dated April 14, 1892 from the Commissioner of Indian Affairs to John K. Rankin, Esq., U. S. Special Agent, Lawrence, Kansas, directing him to proceed to the Yakima Agency and Reservation for the purpose of making allotments to Indians on that Reservation.

*Plaintiff's Exhibit 2-a-2*

A letter dated April 18, 1892, to John K. Rankin, Esq., from the Acting Commissioner of Indian Affairs, transmitting to him the letter of instructions dated April 14, 1892 and the approval of the Acting Secretary of the Interior dated April 15, 1892.

*Plaintiff's Exhibit 2-a-3*

A letter dated April 15, 1892, from the Acting Secretary of the Interior to the Commissioner of Indian Affairs, approving the allotment instructions given to John K. Rankin, Esq., in the letter of April 14, 1892.

*Plaintiff's Exhibit 2-a-4*

A letter dated June 9, 1894, from John K. Rankin, U. S. Special and Disbg. Agt., reporting to the Commissioner of Indian Affairs in Washington, D. C., respecting the allotments which he made and submitting a schedule of allotments made pursuant to his instructions.

*Plaintiff's Exhibit 2-b-1*

A letter dated November 1, 1897, to William E. Casson, Esq., Special Allotting Agent, Burns, Oregon, from W. A. Jones, Commissioner of Indian Affairs, directing him to proceed to the Yakima Agency in Washington to assist in connection with making allotments to Indians residing on the Yakima Reservation.

*Plaintiff's Exhibit 2-b-2*

A letter dated January 30, 1905, to William E. Casson, Esq., Special Allotting Agent, Carson City, Nevada, from C. F. Larrabee, Acting Commissioner, advising him that he had been authorized to make

allotments under Section 2 of the Act of Congress of December 21, 1904, and setting forth the instructions for making the allotments on the Yakima Indian Reservation.

*Plaintiff Exhibit 2-b-3*

A letter dated February 1, 1905, to the Commissioner of Indian Affairs from E. A. Hitchcock, Secretary of the Interior, designating William E. Casson as Special Allotting Agent to make allotments on the Yakima Indian Reservation and to proceed in accordance with instructions given to him by the Commissioner of Indian Affairs.

*Plaintiff's Exhibit 2-c-1*

A letter dated May 26, 1910, from R. G. Valentine, Commissioner, approved by Frank Pierce, First Assistant Secretary of the Interior, to Matthew F. Nourse, Esq., Special Allotting Agent, Tekoa, Washington, directing him to proceed to the Yakima Reservation and to make allotments to the Indians residing on that reservation.

*Plaintiff's Exhibit 2-c-2*

A letter dated July 23, 1910, from C. F. Hauke, Second Assistant Commissioner, approved by Frank Pierce, First Assistant Secretary, to M. F. Nourse, Esq., Special Allotting Agent, Ft. Simcoe, Washington, giving him further instructions respecting the allotment of lands within the Yakima Indian Reservation.

*Plaintiff's Exhibit 2-c-3*

A letter dated May 10, 1911, to M. F. Nourse, Special Allotting Agent, White Swan, Washington, from C. F. Hauke, Second Assistant Commissioner,

setting forth further instructions respecting the allotment of lands in the Yakima Reservation.

*Plaintiff's Exhibit 2-c-4*

A letter dated July 23, 1912, from C. F. Hauke, Second Assistant Commissioner, to Matthew F. Nourse, Special Allotting Agent, Mabton, Washington, giving additional instructions respecting the allotment of lands on the Yakima Indian Reservation.

*Plaintiff's Exhibit 2-c-5*

A letter of September 8, 1913, from Cato Sells, Commissioner, to M. F. Nourse, Special Allotting Agent, giving him further instructions respecting the allotment of lands within the Yakima Indian Reservation.

*Plaintiff's Exhibit 2-d*

A letter of June 19, 1914, to Don M. Carr, Supt. Yakima School, from C. F. Hauke, Second Assistant Commissioner, in connection with making allotments on the Yakima Indian Reservation.

*Plaintiff's Exhibit 3-a*

Pages 28, 30, 31, 32, 33, 49, 51, 56, 59, 61 and 62, from Volume 23, Schedules of Allotments, Yakima Reservation, Washington, Office of Indian Affairs.

*Plaintiff's Exhibit 3-b*

Pages 67, 84, 86, 91 and 92, from Volume 23, Schedules of Allotments, Yakima Reservation, Washington, Office of Indian Affairs.

*Plaintiff's Exhibit 3-c*

Pages 104, 106, 108, 114, 115, 124, 128, 132, and 133, from Volume 23, Schedules of Allotments, Yakima Reservation, Washington, Office of Indian Affairs.



*Plaintiff's Exhibit 3-d*

Pages 13, 14, 15, 22, 33, 34, 53, 59, 67, 80, 81 and 82, from Volume 80H, Schedules of Allotments, Yakima Reservation, Washintgon, Office of Indian Affairs.

*Plaintiff's Exhibit 3-e*

Pages 1, 14 and 15, from Volume 80H, Schedules of Allotments, Yakima Reservation, Washington, Office of Indian Affairs.

*Plaintiff's Exhibit 4-a Withdrawn*

Typewritten list of trust allotments on south side of Ahtanum Creek showing allotment numbers, name of original allottee, land description and gross area.

*Plaintiff's Exhibit 4-b*

Certified copies of trust patents.

*Plaintiff's Exhibit 4-c Withdrawn*

List of fee patents, issued on lands south of Ahtanum Creek within Ahtanum Indian Irrigation Project showing allotment number, land description and gross area.

*Plaintiff's Exhibit 4-d*

Certified copies of fee patents.

*Plaintiff's Exhibit 4-e*

Tabulation showing water diversions and irrigated areas along Ahtanum Creek within boundaries of Yakima Indian Reservation, Washington.

*Plaintiff's Exhibit 5-a*

Map showing Ahtanum Irrigation System ownership south side of Ahtanum Creek.

*Plaintiff's Exhibit 5-b*

Map showing development Ahtanum Indian Irrigation Project System.

*Plaintiff's Exhibit 5-c Withdrawn*

Map showing names of owners of lands when allotted duplicate of Exhibit 5-a with addition that names of Indians owners being added or names of record of last non-Indian owner.

*Plaintiff's Exhibit 5-d*

Map showing irrigable and non-irrigable lands south of Ahtanum Creek in Yakima Indian Reservation.

*Plaintiff's Exhibit 5-e Withdrawn*

Map disclosing irrigation ditches from Ahtanum River—1915.

*Plaintiff's Exhibit 5-f*

Map showing irrigation ditches from Ahtanum River, Yakima County, Washington, May 1907.

*Plaintiff's Exhibit 5-g Withdrawn*

Map showing the canal system on the south side of Ahtanum Creek as of October 1949.

*Plaintiff's Exhibit 5-h Withdrawn*

Map showing land ownership south of Ahtanum Creek.

*Plaintiff's Exhibit 5-i Withdrawn**Plaintiff's Exhibit 5-j Withdrawn**Plaintiff's Exhibit 5-k Withdrawn*

Map showing Ahtanum (Indian Irrigation) Project dated May 1950—United States Indian Service,

Yakima Reservation, Washington, Department of the Interior.

*Plaintiff's Exhibit 5-l*

Aerial photograph showing a portion of Ahtanum Valley and diversion ditches on the south side of Ahtanum Creek.

*Plaintiff's Exhibit 5-m*

Withdrawn and request it be re-designated Plaintiff's Exhibit 7-a.

*Plaintiff's Exhibit 5-n*

Withdrawn and request it be re-designated Plaintiff's Exhibit 7-b.

*Plaintiff's Exhibit 5-x*

Reserved.

*Plaintiff's Exhibit 6-a*

Photostat copies of the original records of the United States Geological Survey showing daily gauge heights and discharges, also calculated monthly run offs per square mile, run off depth in inches and run off in acre feet for the South Fork of Ahtanum Creek, gauge for which was located at Shannafelt Ranch near Tampico, Washington, for the years 1908 to 1914 inclusive.

*Plaintiff's Exhibit 6-b*

Photostat copies of the original records of the United States Geological Survey showing daily gauge heights and discharges, also calculated monthly run offs per square mile, run off depth in inches and run off in acre feet for the South Fork of Ahtanum Creek, gauge for which was located at Conrads Ranch, for the years 1915 to 1924 inclusive, and for the years 1931 to 1947 inclusive.

*Plaintiff's Exhibit 6-c*

Photostat copies of the original records of the United States Geological Survey showing daily gauge heights and discharges, also calculated monthly run offs per square mile, run off depth in inches and run off in acre feet and gauge being located on Ahtanum Creek near The Narrows near Tampico, Washington, for the years 1908 to 1913 inclusive. (The flows shown on these sheets are for the main stem of Ahtanum Creek which includes the flows from both the north fork and south fork.)

*Plaintiff's Exhibit 6-d*

Photostat copies of the original records of the United States Geological Survey showing daily gauge heights and discharges, also calculated monthly run offs per square mile, run off depth in inches and run off in acre feet for the North Fork of Ahtanum Creek, the gauge for which was located near Tampico, Washington for the years 1907 to 1924 inclusive and 1931 to 1947 inclusive.

*Plaintiff's Exhibit 6-e*

Photostat copies of the original records of the United States Geological Survey showing daily gauge heights and discharges, also calculated monthly run offs per square mile, run off depth in inches and run off in acre feet for Ahtanum Creek from a gauging station near the town of Yakima City, Washington (Union Gap) for the years 1904, 1907, 1908, 1910, 1911, and 1912. (These records are taken on the main stem of Ahtanum Creek and show the records of the lower end of the stream after all diversions are made.)

*Plaintiff's Exhibit 6-f*

Tabulation stream flow north fork Ahtanum Creek; stream flow south fork Ahtanum Creek; stream flows and canal diversions; tabulation diversions Ahtanum main canal, Ahtanum lower canal for first and second half irrigation seasons.

*Plaintiff's Exhibit 7*

Soil survey maps and analysis for each individual allotment together with accompanying tabulation for which rights to the use of water is being claimed. Substitute of corrected copy of exhibit being made.

*Plaintiff's Exhibit 7-a*

Aerial photograph, colored, showing land classifications in a portion of Ahtanum Valley on the south side of Ahtanum Creek with appropriate soil classification legend.

*Plaintiff's Exhibit 7-b*

Map showing area on south side of Ahtanum Creek showing the various classes of soil, colored appropriately in accordance with legend.

*Plaintiff's Exhibit 8*

*Munn v. Redman*, No. 3794, Superior Court, County of Yakima, State of Washington—Copy of temporary restraining order, August 18, 1906; amended complaint, August 18, 1906; answer of defendant W. H. Redman dated October 26, 1906 all certified to by the County Clerk and ex officio clerk of the Superior Court, County of Yakima, State of Washington on the 7th day of February, 1949.

*Plaintiff's Exhibit 9*

Hearing Before the Committee on Indian Affairs, United States Senate, 72 Congress, 1st Session, S.



3998, A Bill Approving and Confirming for Apportionment of Ahtanum Creek, Washington, between Yakima Indian Reservation and Lands North Thereof, dated May 9, 1908.

*Plaintiff's Exhibit 10 Withdrawn*

*Plaintiff's Exhibit 11*

Exhibits 11-1 through 11-146. Correspondence from The Archives, Department of Justice and the Department of the Interior, all of which pertain to the continuing conflict respecting the apportionment of the available supply of water from Ahtanum Creek. Set forth on the following pages is a synopsis of the content together with designation of data contained in the exhibits in question.

EXHIBITS

*Plaintiff's Exhibit 11-1 to 11-146 Incl.*

11-1. A letter dated August 23, 1906, to the Attorney General from the Acting Secretary of the Interior, transmitting a copy of a letter dated August 15, 1906, from the Acting Commissioner of the Office of Indian Affairs to the Secretary of the Interior advising that an injunction proceeding had been instituted against one of the officials of the United States in charge of diverting water from Ahtanum Creek for use on the Yakima Indian Reservation, requesting the Attorney General to take such action as he deems necessary and advisable in the premises.

11-2. Copy of a letter dated August 25, 1906, from the Acting Attorney General to the Secretary of the Interior, acknowledging receipt of the latter official's letter of August 23, 1906, advising that the United States Attorney for the Eastern District of Washington had been directed to take all action necessary to

protect the interests of the Government and the Indians in the matter of the injunction against the officials on the Yakima Indian Reservation, involving diversion of water from Ahtanum Creek.

11-3. Copy of telegram dated August 25, 1906, from the Attorney General to the United States Attorney in Spokane, Washington, directing him to take all action necessary to protect the interests of the United States and the Indians in the injunction against the officials on the Yakima Indian Reservation, involving diversion of water from Ahtanum Creek.

11-4. A letter dated August 31, 1906, from the Acting Secretary of the Department of the Interior to the Attorney General, transmitting to the Attorney General a copy of a letter dated August 27, 1906, from the Commissioner of the Office of Indian Affairs to the Secretary of the Interior, reporting further on the injunction proceedings which had been instituted against the official of the United States in charge of diverting water from Ahtanum Creek to the Yakima Indian Reservation.

11-5. A copy of a telegram dated August 31, 1906, from the Acting Attorney General to the United States Attorney in Spokane, directing him to confer with the Superintendent of the Yakima Indian Reservation, and to take all action necessary to protect the interests of the United States.

11-6. A letter dated October 24, 1907, from James Rudolph Garfield, Secretary of the Department of the Interior, to the Commissioner of the Office of Indian Affairs, delivering to him a report of the Chief Engineer of the Office of Indian Affairs, bearing upon the dispute existing between the present users of the north side of Ahtanum Creek and the Government on behalf of the Reservation. Report of

Chief Engineer accompanying that later dated October 17, 1907.

11-7. A letter dated October 30, 1906, from A. G. Avery, United States Attorney, to the Attorney General, reporting on the case of *David Munn v. W. H. Redman, et al.*, in the Superior Court for Yakima County, Washington, the suit involving the injunction proceedings against an official of the United States in charge of diverting water from Ahtanum Creek for use on the Yakima Indian Reservation. Accompanying that letter is a statement from H. J. Snively, Attorney from Plaintiff Munn in the case last mentioned, reporting the objects for which the suit was brought. Likewise, accompanying Mr. Avery's letter is a copy of the order entered on August 18, 1906, purporting to enjoin the official of the United States from diverting water from Ahtanum Creek. There is likewise transmitted a copy of the complaint filed in the case of *Munn v. Redman* which complaint was signed by Attorney for Plaintiff H. J. Snively. Likewise accompanying the letter in question is the answer of Defendant, W. H. Redman, the official of the United States against whom the injunction proceeding was instituted. That answer was signed by A. G. Avery and J. B. Lindsley as attorneys for the defendant W. H. Redman. However, the appearance by counsel last mentioned was not on behalf of the United States but rather appearance by those attorneys in their individual capacity.

11-8. A copy of a letter dated November 16, 1906, from the Acting Attorney General to A. G. Avery, United States Attorney, Spokane, Washington, approving the action taken by the United States Attorney in answering the complaint in the case of *Munn v. Redman*.

11-9. A letter dated May 24, 1907, from A. G. Avery to the Attorney General reporting the status of the case of *Munn v. Redman*, adding that the case will probably be heard on its merits. Mr. Avery suggests the water problem will not be settled until a suit in court is commenced by the Government. He requests instruction re such a suit.

11-10. A copy of a letter dated June 13, 1907, from the Attorney General to the Secretary of the Interior, transmitting to that official a copy of the letter from A. G. Avery dated May 24, 1907, referring especially to the suggestion of the United States Attorney that an action be brought by the United States to enjoin the use of the waters of Ahtanum Creek by the white water users involved in this action.

11-11. A letter dated June 18, 1907, from George W. Woodruff, Acting Secretary of the Interior, to the Attorney General, referring to the recommendation of A. G. Avery made in his letter of May 24, 1907, that a suit should be instituted. In the final paragraph of this letter the statement is made that it is of the greatest importance that the rights of the Government and the Indians to the use of water of Ahtanum Creek should be determined as soon as possible, adding that the course suggested seems to be the feasible one for that purpose.

11-12. A copy of a letter dated June 20, 1907, from the Attorney General to A. G. Avery, United States Attorney in Spokane, Washington, stating that it is of the greatest importance that a suit be instituted to adjudicate the waters of Ahtanum Creek as soon as possible.

11-13. A letter dated July 22, 1907, from A. G. Avery, United States Attorney in Spokane, to the Attorney General transmitting to him a copy of a bill to be used for the institution of the suit to



adjudicate the rights to the use of water of Ahtanum Creek in accordance with his earlier recommendation, and requesting if the form of the bill is approved, that the Attorney General affix his signature to it and return the bill for filing.

11-14. A copy of a letter of July 30, 1907, from the Attorney General to A. G. Avery, United States Attorney, Spokane, Washington, transmitting to him a copy of the bill duly signed for use in the institution of a suit to adjudicate the rights to the use of water from Ahtanum Creek, and directing the United States Attorney to secure the names of the defendants, and set them forth in the complaint.

11-15. A letter dated August 8, 1907, from James E. Wilson, Acting Secretary of Interior, to the Attorney General requesting that a copy of the bill prepared by A. G. Avery for the adjudication of rights to the use of water be transmitted to the Department of the Interior.

11-16. A copy of a letter dated August 10, 1907 from the Attorney General to the Secretary of the Interior transmitting to him a copy of the bill prepared for use in the adjudication of rights to the use of water from Ahtanum Creek.

11-17. A copy of a telegram dated August 12, 1907 from the Attorney General to the United States Attorney at Spokane, advising him that unless the statute of limitations or some other question prevents, the bill of equity submitted to him in connection with the Ahtanum Creek matter should not be filed until further notice.

11-18. A copy of a letter dated October 28, 1907, from the Commissioner of the Office of Indian Affairs to the Superintendent in charge of the Yakima Agency, directing him to confer with Attorney Snively for the purpose of effectuating if possible an adjust-



ment out of court of the rights to the use of water of Ahtanum Creek.

11-19. A letter dated January 10, 1908 from Jay Lynch, Superintendent and S. D. A., to the Commissioner of Indian Affairs stating that he will undertake to bring about a settlement of the dispute over rights to the use of water from Ahtanum Creek, together with a copy of a letter dated January 9, 1908 from Mr. Lynch to A. G. Avery, U. S. Attorney.

11-20. A copy of a newspaper report bearing stamp of the Office of Indians Affairs of March 11, 1908, stating that the Ahtanum Creek ranchers on the north side of the stream have selected a committee to represent them for the purpose of bringing about a settlement of the dispute over rights to the use of water from Ahtanum Creek.

11-21. A letter dated April 9, 1908, from Jay Lynch, Superintendent and S. D. A., to the Commissioner of Indian Affairs, requesting that Chief Engineer Code be directed to go to the Yakima Indian Reservation to confer with the Committee of white water users for the purpose of bringing about a settlement of the rights to the use of water from Ahtanum Creek.

11-22. A copy of a telegram dated April 11, 1908, from Lynch, Superintendent of the Yakima Indian Agency, reporting that a committee had been empowered to attempt to effectuate a settlement and recommending that Mr. Code, Chief Engineer, be sent as soon as possible with instructions in regard to a settlement of the question.

11-23. A letter dated April 13, 1908, from James Rudolph Garfield, Secretary of Interior, to W. H. Code, Chief Engineer, at the Yakima Agency, in regard to the steps to be taken in connection with the settlement of the dispute over rights to the use of water from Ahtanum Creek.

11-24. A telegram dated April 13, 1908, signed by the Secretary of Interior to Code, Chief Engineer, directing him to proceed to the Yakima Agency in connection with the dispute over rights to the use of water from Ahtanum Creek.

11-25. A letter dated May 4, 1908, from the Secretary of the Interior to the Commissioner of Indian Affairs, transmitting to him a copy of a report from Chief Engineer Code, relative to the dispute over rights to the use of water from Ahtanum Creek.

11-26. A letter dated May 5, 1908, from the Acting Commissioner of the Office of Indian Affairs to the Secretary of the Interior, approving a proposed settlement of the Ahtanum Creek dispute which was submitted by Chief Engineer Code; accompanying this letter was a proposed wire dated May 5, 1908, advising Code that the proposed settlement was approved.

11-27. The memorandum of agreement dated May 9, 1908, between the United States of America, acting through W. H. Code, Chief Engineer of Irrigation, Indian Bureau, together with numerous white users of water from Ahtanum Creek, pursuant to which the waters of Ahtanum Creek were divided as follows: The Yakima Indians to receive 25% of the natural flow of the creek and the white water users to receive 75% of the natural flow of that stream. The instrument, in addition to being signed by W. H. Code, was approved by Frank Pierce, First Assistant Secretary of the Interior on the 30th day of June, 1908.

11-28. A letter dated June 27, 1908, to the Secretary of the Interior from the Acting Commissioner of Indian Affairs, reporting negotiations respecting the dispute over rights to the use of water from Ahtanum Creek and transmitting a copy of a special Power of Attorney certified by the County Recorder for Yak-

ima County, pursuant to which the representatives of the white water users were empowered to execute the agreement of May 9, 1908. Likewise accompanying that letter was a letter of June 20, 1908 from Jay Lynch, Superintendent and S. D. A. transmitting to the Commissioner of Indian Affairs a certified copy of the Special Power of Attorney to which reference has been made.

11-29. A letter dated August 21, 1908, from James E. Wilson, Acting Secretary of Interior to the Commissioner of Indian Affairs, referring to the bill of complaint prepared in connection with the case of *Munn v. Redman* requesting that report be made as to the status of the matter.

11-30. A letter dated August 22, 1908, from the Commissioner of Indian Affairs, responding to the Secretary of the Interior's letter of August 21, reporting on the status of the dispute over rights to the use of waters from Ahtanum Creek, and reporting that the agreement purportedly compromising the dispute had been approved.

11-31. A letter dated March 20, 1912, from the United States Attorney, Spokane, Washington, to the Attorney General, reporting that a motion had been filed to dismiss the case of *Munn v. Redman*.

11-32. A letter dated July 15, 1912, to the Attorney General from five Yakima Indians and their corresponding secretary, Louis Mann, requesting that the Attorney General institute a suit in the proper courts of the United States to determine the rights of the Yakima Indians in the Yakima River and in Ahtanum River.

11-33. A copy of a letter dated September 25, 1912, from the Acting Attorney General to Louis Mann, corresponding secretary for the Yakima Indians responding to their letter of July 15, 1912, re-

questing that the Indians submit to the Attorney General additional information on the subject.

11-34. A letter dated October 28, 1912, to the Attorney General from Louis Mann, corresponding secretary, Yakima Indian Council Lodge, reporting in full the situation respecting their claims to water from the Yakima River and from Ahtanum Creek.

11-35. A copy of a letter dated November 16, 1912, from Assistant Attorney General Knaebel to the Secretary of the Interior requesting a recommendation respecting the petition of six allottees of the Yakima Confederated Tribes of Indians that suit be instituted immediately to determine the rights of the said tribes to the waters of Ahtanum and Yakima Rivers.

11-36. A letter dated January 23, 1913, from the Secretary of the Interior to the Attorney General referring to the request by the Yakima Indians to the Attorney General that a suit be instituted to determine the rights of the Indians to the waters of Ahtanum and Yakima Rivers. The Secretary of the Interior states that such a proceeding should not be instituted for the reason that here was then before Congress Senate Bill 6693 which, if passed, would restore to the Indians the water rights to which they are entitled. Accompanying that letter was a copy of S. 6693, a bill "To provide water for irrigating lands of the Yakima Indian Reservation, Washington, and for other purposes." Also accompanying that letter was a copy of a letter from the Secretary of the Interior dated January 23, 1913, to Director of Reclamation Service and Commissioner of Indian Affairs, jointly, setting forth the Department's policy.

11-37. A memorandum of the Department of Justice dated January 30, 1913, referring to the legal soundness of the claim of the Yakima Indians



to water from Ahtanum Creek but stating that the responsibility for bringing this suit resided with the Department of Interior and that they had requested that no suit be brought.

11-38. A copy of a letter dated February 14, 1913, from the Assistant Attorney General to Louis Mann, corresponding secretary, Yakima Indian Council Lodge, advising him that the matter had been sub-submitted to the Secretary of the Interior, who had recommended that no proceedings be instituted at this time.

11-39. A letter dated November 2, 1918, from L. M. Holt, Supervising Engineer at Yakima Reservation, to the Commissioner of Indian Affairs, reporting on the status of rights to the use of water from Ahtanum Creek and reporting on the administration of the rights to the use of water under the agreement of 1908. There was enclosed a copy of letter dated October 15, 1918, from Mr. Holt to Marvin Chase, State Hydraulic Engineer, Olympia, Washington, referring to the dispute between the white water users and the Indians on the Yakima Indian Reservation.

11-40. A letter dated September 5, 1923, from W. M. Reed, Chief Engineer, to the Commissioner of Indian Affairs, suggesting that action be taken toward the preparation of suit to adjudicate rights to the use of water from Ahtanum Creek.

11-41. A petition received in the Department of Interior September 11, 1923, from Indians on the Yakima Indian Reservation, requesting the Secretary of the Interior to take the requisite steps to procure an adjudication of Ahtanum Creek.

11-42. A copy of a letter from Charles H. Burke, Commissioner, to L. M. Holt, Supervising Engineer, dated July 5, 1927, directing Mr. Holt to assume the



position that the Federal Government has exclusive control over the Indian lands and in accordance with a decision in the *Winters* case will demand sufficient water from Ahtanum Creek to supply the needs of the lands for irrigation.

11-43. A copy of a telegram to Commissioner of Indian Affairs from W. L. Jones, Senator, received in Office of Indian Affairs July 29, 1927, referring to the instructions from the Commissioner of Indian Affairs to Supervisor Holt relating to the claimants of the Yakima Reservation to water from Ahtanum Creek and stating that immediate steps should be taken to avoid a serious situation between the white water users and the Yakima Indians.

11-44. A letter dated August 2, 1927, from the State Supervisor of Hydraulics, Olympia, Washington, to the Acting Secretary of the Interior, referring to the failure of some to comply with the agreement of 1908, but stating that he believed the United States would take the proper position in regard to the division of waters of Ahtanum Creek.

11-45. A letter dated August 10, 1927, from L. M. Holt, Supervising Engineer, to Commissioner of Indian Affairs discussing wasteful methods of diversion used by white water users and stating he found nine different dams completely obstructing channel of Ahtanum Creek.

11-46. A letter dated September 8, 1927, from W. M. Reed, Chief Engineer, Los Angeles, California, to the Commissioner of Indian Affairs, in regard to rights to the use of water from Ahtanum Creek, in which it is reported that there was some consideration of instituting an adjudication suit for the purpose of determining the rights to the use of water from the stream in question.

11-47. A letter dated July 19, 1927, from the State Supervisor of Hydraulics, Olympia, Washington, to the Secretary of the Interior, reporting the dispute between water users on Ahtanum Creek and referring specifically to the agreement of May 9, 1908, purporting to settle the matter. Likewise referred to was the order of Commissioner Burke to Supervisor Holt directing him to claim water from Ahtanum Creek in quantities sufficient to irrigate the lands in the Indian Reservation susceptible of irrigation from that source, it is observed in that letter that the order to Holt was suspended at the request of Senator Jones. Accompanying the letter was a clipping from the Yakima Daily Republic reporting the dispute over Ahtanum Creek.

11-48. A letter dated June 29, 1928, from L. M. Holt, Supervising Engineer, to the Commissioner of Indian Affairs, reporting on the dispute over rights to the use of water from Ahtanum Creek and pointing out that it is impossible for him to get water in addition to that prescribed in the agreement of May 9, 1908.

11-49. A letter dated July 16, 1928, from L. M. Holt, Supervising Engineer, transmitting a clipping from the Yakima Sunday Herald of July 15, 1928, in regard to the white water users' distribution system, and pointing out the wasteful character of that system.

11-50. A letter dated January 25, 1929, from L. M. Holt, Supervising Engineer, to Commissioner of Indian Affairs, enclosing a topographic map showing part of the Klickitat, Ahtanum and Simcoe Creek watersheds. Mr. Holt reported on the possibility of securing water from other sources for the lands in need of water on the Yakima Indian Reservation.

11-51. A letter dated February 9, 1929, from the Superintendent of the Yakima Indian Agency to the

Commissioner of Indian Affairs, transmitting a petition signed by Yakima Indians, the petition being dated February 5, 1929, requesting that an investigation of a possible supply of water from the Klickitat River be undertaken.

11-52. A letter dated April 9, 1929, from C. R. Trowbridge, Inspector, to the Secretary of the Interior, enclosing a copy of an article in the Yakima Herald of March 23, 1929, referring to the controversy between the Yakima Indians and the white water users from Ahtanum Creek.

11-53. A letter dated April 19, 1929, from W. L. Jones, United States Senator, with enclosures, to the Commissioner of Indian Affairs, referring to the request by the Yakima Indians that there be undertaken an investigation to bring water from the Klickitat River to the Yakima Indian Reservation to supplement the existing supply.

11-54. A letter dated May 3, 1929, from the State Supervisor of Hydraulics, Olympia, Washington, to the Secretary of the Interior requesting that a disinterested hydrographer be appointed to measure the water of Ahtanum Creek in accordance with the agreement of May 9, 1908, a copy of which agreement accompanied the letter.

11-55. A letter dated May 6, 1929, from John H. Lynch, Secretary Ahtanum Irrigation District, to Honorable C. C. Dill, United States Senator, soliciting the aid of the Senator and Senator Jones to present the white water users' case before the Secretary of the Interior in connection with the dispute in regard to rights to the use of water from Ahtanum Creek.

11-56. A letter dated May 6, 1929, from John H. Lynch, Secretary Ahtanum Irrigation District, to the Secretary of the Interior, respecting the dispute over

rights to the use of water and transmitting to the Secretary of the Interior a copy of the letter of July 19, 1927, to the Secretary of the Interior from the State Supervisor of Hydraulics, Olympia, Washington, together with a copy of the agreement of May 9, 1908.

11-57. A letter dated May 7, 1929, from Senator C. C. Dill, to the Commissioner of Indian Affairs, enclosing a copy of a telegram from John H. Lynch, Secretary Ahtanum Irrigation District, reporting to the Senator that the Indian Bureau was disregarding a compromise agreement as to the rights to the use of water from Ahtanum Creek.

11-58. A petition received in the Department of Interior May 16, 1929, asking that action be taken for a redistribution of the water of Ahtanum Creek.

11-59. A letter dated May 18, 1929, from C. C. Dill to the Secretary of the Interior in regard to the dispute between white and Indian users over the right to the use of water from Ahtanum Creek, transmitting a copy of the telegram from John H. Lynch, Secretary of Ahtanum Irrigation District, dated May 17, 1929, to the Senator.

11-60. A letter dated May 20, 1929, from W. L. Jones, United States Senator to the Secretary of the Interior, bringing to his attention the dispute over rights to the use of water from Ahtanum Creek and stating that in his best judgment every effort should be made to bring about a satisfactory adjustment of the matter without resorting to the courts.

11-61. A telegram dated May 31, 1929, from John H. Lynch, Secretary of Ahtanum Irrigation District to the Secretary of the Interior, stating that the Indians are diverting about half of the flow of Ahtanum Creek and tha the ranchers will help themselves to water from that stream unless a cut of this diversion to one-quarter of the flow is made.



11-62. A letter dated June 13, 1929, from John H. Lynch, Secretary of Ahtanum Irrigation District to the Secretary of the Interior, transmitting a copy of Lynch's letter to the State District Watermaster for Yakima County, referring to his understanding that the Secretary of the Interior will undertake an investigation as to the facts and law on the subject of the dispute over rights to the use of water from Ahtanum Creek.

11-63. A letter dated June 24, 1929, from John H. Lynch, Secretary of Ahtanum Irrigation District, to the Secretary of the Interior, relative to an arrangement purporting to settle the dispute over the rights to divert water from Ahtanum Creek and transmitting a copy of a letter dated June 22, 1929, from John H. Lynch, Secretary, to the editor of the Morning Herald, Yakima, Washington.

11-64. A letter dated July 25, 1930, from Joseph M. Dixon, First Assistant Secretary of the Interior to the Attorney General, setting forth a copy of a wire dated June 24, 1930, from L. M. Holt, Supervising Engineer, Yakima Reservation, in regard to construction of a dam across Ahtanum Creek. There were enclosed with the letter to the Attorney General copies of the agreement of 1908, together with an opinion from the Solicitor of the Department of the Interior dated May 24, 1930 in regard to certain aspects of the agreement of May 9, 1908. The First Assistant Secretary states that there is a need for immediate action and requests that the Attorney General wire the United States Attorney to investigate the matter and to take such steps as the facts and the law of the case warrant.

11-65. A wire dated July 28, 1930, from John H. Lynch, Secretary of Ahtanum Irrigation District to the Secretary of the Interior, in regard to the destruc-



tion of the dam installed by the white water users and the posting of armed guards to prevent those white water users from diverting their share of the water.

11-66. A copy of a telegram dated July 30, 1930, from C. J. Rhoads to Holt, Indian Service, Yakima, Washington, reporting on telegram from Secretary of Ahtanum Irrigation District, respecting armed guards, directing Holt to report immediately.

11-67. Copy of telegram dated July 30, 1930, C. J. Rhoads to John H. Lynch, Secretary of Ahtanum Irrigation District, stating that it is believed that an equitable adjustment may be reached.

11-68. A letter dated July 30, 1930, from William D. Mitchell, Attorney General to the Secretary of the Interior, advising that on July 28, 1930, the United States Attorney for the Eastern District of Washington was instructed to investigate the Ahtanum Creek dispute, and to take appropriate steps to prevent construction of a dam across the stream in violation of rights of the Government as defined in the agreement of 1908.

11-69. A wire dated July 31, 1930, from Holt, Superintendent of Yakima Reservation, to the Commissioner of Indian Affairs, reporting dispute over rights to the use of water from Ahtanum Creek, stating that conference between Indian Service officials and state officials resulted in an agreement satisfactory to all, pending action of Department of Justice.

11-70. Letter dated August 2, 1930, from L. M. Holt to Commissioner of Indian Affairs, reporting on dispute over rights to the use of water of Ahtanum Creek.

11-71. Letter dated August 9, 1930, to the Secretary of the Interior from John H. Lynch, Secretary and Attorney for Ahtanum Irrigation District, reporting

in full in regard to the dispute over rights to the use of water from Ahtanum Creek and setting forth considerable data in regard to that dispute.

11-72. A letter dated August 13, 1930, from Senator C. C. Dill, to the Secretary of the Interior, and a copy of the response to Senator Dill, the response being dated August 25, 1930; both of which pertain to the dispute over rights to the use of water from Ahtanum Creek.

11-73. A copy of a letter dated August 25, 1930, to Senator Jones of the United States Senate, from John H. Edwards, Acting Secretary of the Interior, together with a carbon copy of a letter dated August 9, 1930, to Senator Jones, bearing the signature of John H. Lynch, Secretary and Attorney of the Ahtanum Irrigation District, and a copy of a letter dated August 9, 1930, addressed to the Secretary of the Interior and bearing the typewritten signature of John H. Lynch, Secretary and Attorney for Ahtanum Irrigation District. In this data there is set forth a considerable resume of the then pending dispute over rights to the use of water from Ahtanum Creek.

11-74. A copy of a letter dated August 25, 1930, to John W. Summers, from the Acting Secretary of the Interior, in regard to the dispute over rights to the use of water from Ahtanum Creek and referring to a letter from John H. Lynch to Mr. Summers pertaining to that question.

11-75. A letter dated October 4, 1930, from John H. Lynch, Secretary and Attorney for the Ahtanum Irrigation District to the Attorney General transmitting copy of a letter from John H. Edwards, Acting Secretary of the Interior to John H. Lynch, together with a copy of the power of attorney purporting to authorize the execution of the agreement of May 9,

1908. In Mr. Lynch's letter background in regard to the agreement in question is set forth in some detail.

11-76. A letter dated October 6, 1930, from C. C. Dill, United States Senator, to William D. Mitchell, Attorney General, transmitting to the Attorney General copy of a letter dated October 4, 1930 from John H. Lynch, Secretary and Attorney for the Ahtanum Irrigation District, in which Mr. Lynch refers to the efforts of the Senator to procure an actual consideration of this matter by the Secretary of the Interior and by the Attorney General.

11-77. A letter dated October 22, 1930, from Solicitor Finney of the Department of the Interior to G. A. Iverson, Land Division, Department of Justice, referring to the dispute over rights to the use of water from Ahtanum Creek and enclosing a copy of a memorandum from a member of his staff. In that letter Solicitor Finney states that the contention that the agreement of May 9, 1908 was beyond the scope of the authority of the Secretary of the Interior might be sustained.

11-78. A letter dated December 30, 1930, from the Attorney General to the Secretary of the Interior, transmitting a photostatic copy of the memorandum dated December 2, 1930 to Nugent Dodds, Acting Head, Criminal Division, Department of Justice, from J. E. Hoover, Director of Bureau of Investigation, submitting a report in regard to the dispute over rights to the use of water from Ahtanum Creek.

11-79. A telegram dated April 10, 1931, from Holt to the Commissioner of Indian Affairs, in regard to the desirability of reducing diversions to 25% of the flow pending final opinion in regard to construction of the agreement of May 9, 1908.

11-80. A letter dated April 27, 1931, from L. M. Holt, Supervising Engineer, Yakima Indian Reservation, to the Commissioner of Indian Affairs, referring to a copy of the Solicitor's opinion of March 18, 1931. Mr. Holt discusses at length his views in regard to the Solicitor's opinion.

11-81. An undated letter to the Secretary of the Interior from John H. Lynch, Secretary of Ahtanum Irrigation District, which was received in the Department of the Interior May 2, 1931, in which Mr. Lynch comments upon the Solicitor's opinion of March 18, 1931.

11-82. A wire dated May 3, 1931, from Erle J. Barnes, Director Conservation and Development, Olympia, Washington, stating that the Indian Service is ignoring the agreement of May 9, 1908, and commenting further upon that agreement.

11-83. A letter dated May 12, 1931, from Joseph M. Dixon, First Assistant Secretary of the Department of the Interior to the Attorney General of the United States, stating, among other things, that the parties interested in the conflict between the Yakima Indians and the white water users over rights to the use of water from Ahtanum Creek will not be satisfied until a court decision in the matter has been rendered, and requesting the Attorney General to institute a suit to quiet title in and to the waters of Ahtanum Creek and its tributaries.

11-84. A letter dated May 18, 1931, from William D. Mitchell, Attorney General, to the Secretary of the Interior, responding to the letter of First Assistant Secretary Dixon dated May 12, 1931, and advising that the United States Attorney at Spokane, Washington, had been instructed to prepare a bill of complaint for the purpose of bringing a suit to settle and determine the water rights of Ahtanum Creek.



11-85. A copy of a telegram dated May 21, 1931, from John H. Lynch, Secretary of Ahtanum Irrigation District, to W. L. Jones, Advising the Senator that the Ahtanum difficulty had been adjusted for that season.

11-86. A letter dated June 1, 1931 from Lawrence Richey, Secretary to the President, to the Attorney General, transmitting a copy of a telegram from Senator W. L. Jones to the President, in regard to the Ahtanum Creek dispute. Senator Jones stated to the President that it was imperative that orders be issued stopping any judicial proceeding for the current year respecting the rights on Ahtanum Creek.

11-87. A memorandum dated June 1, 1931 to Mr. Ely of the Office of the Secretary of the Interior from the Commissioner of Indian Affairs, transmitting a copy of a letter dated May 19, 1931, addressed to the President, and signed by the Director of the Department of Conservation and Development, Olympia, Washington, to which letter was attached a type-written copy of the agreement of May 9, 1908; a copy of a letter dated May 9, 1929, from the State Supervisor of Hydraulics to W. H. Code; a copy of an opinion dated June 7, 1929 from H. C. Finney, Solicitor of the Department of the Interior to the Secretary of Interior; a copy of a letter from W. H. Code dated September 9, 1929, to the Supervisor of Hydraulics, Olympia, Washington.

11-88. A copy of a memorandum dated June 2, 1931 from the Commissioner of Indian Affairs to Mr. Ely of the Office of the Secretary of the Interior, setting forth a resume of the situation on Ahtanum Creek as it pertains in particular to the agreement of May 9, 1908.

11-89. A letter dated June 8, 1931 from the Acting Secretary of the Interior to the Attorney General



transmitting a copy of a letter dated May 19, 1931, from the Director of the Department of Conservation, State of Washington, to Secretary Wilbur; a copy of a telegram of May 21, 1931, from Lynch to Senator Jones; a copy of a letter dated September 9, 1929, from W. H. Code to R. K. Tiffany, Supervisor of Hydraulics, Olympia, Washington, respecting the agreement of May 9, 1908; a copy of memorandum dated June 2, 1931, to Mr. Ely from Commissioner of Indian Affairs.

11-90. A letter dated June 13, 1931 from Senator C. C. Dill to the Commissioner of Indian Affairs, forwarding to him a copy of a letter dated May 27, 1931 from the President of the Ahtanum Irrigation District. Senator Dill states that he hopes a compromise may be reached rendering unnecessary the institution of litigation.

11-91. A letter dated June 23, 1931 from the Superintendent of the Yakima Indian Agency to Commissioner of Indian Affairs, transmitting a petition by the Yakima Indians owning farm land on the Ahtanum Irrigation Project, requesting that they be given fair treatment and that their rights be protected.

11-92. A clipping from the Yakima Morning Herald dated Saturday, November 21, 1931, stating that the white water users from Ahtanum Creek have presented their problem to Senator Jones and are requesting his assistance.

11-93. A letter dated November 25, 1931, from W. M. Reed, Special Irrigation Engineer, to Director of Irrigation, Bureau of Indian Affairs, advising him of having contacted the United States Attorney for the purpose of acquainting him with all the facts involving the Ahtanum Creek dispute. Likewise reported in that letter were the efforts towards seeking

a compromise between the Indian and white water users over the stream in question.

11-94. A letter dated November 30, 1931, from W. M. Reed, Special Irrigation Engineer, to the Director of Irrigation, Bureau of Indian Affairs, reporting on efforts to effectuate a compromise for 1932 in the dispute over rights to the use of water from Ahtanum Creek. In that letter he recommends that no suit be instituted until every effort to settle the dispute by compromise has been exhausted.

11-95. A letter dated December 3, 1931, from Roy C. Fox, United States Attorney to the Attorney General. Accompanying that letter was a typewritten copy of a letter dated November 30, 1931, from G. E. Clark, District Counsel, U. S. Indian Field Service, to John H. Lynch, Secretary of Ahtanum Irrigation District; a copy of a letter dated December 1, 1931, from John H. Lynch, Secretary and Attorney for Ahtanum Irrigation District to G. E. Clark; a copy of a letter dated December 1, 1931, from G. E. Clark, to Roy C. Fox, United States Attorney; all of which pertain to a proposed settlement respecting rights to the use of water from Ahtanum Creek during the irrigation season of 1932.

11-96. A letter dated January 18, 1932, from the Attorney General to the Secretary of the Interior advising that in view of the agreement for the irrigation season 1932 which had been reached in regard to water from Ahtanum Creek the United States Attorney had recommended no action be taken for the institution of the suit to adjudicate the rights to the use of water which were involved.

11-97. A letter dated February 13, 1932, from Senator C. C. Dill to the Commissioner of the Bureau of Indian Affairs, transmitting to him copy of a letter dated February 8, 1932, from John H. Lynch, Secre-

tary of Ahtanum Irrigation District, to Senator Dill. In Mr. Lynch's letter reference is made to the desirability of referring the dispute over the rights to the use of water of Ahtanum Creek to Congress for settlement.

11-98. A printed copy of S. 3998, 72nd Congress, 1st Session, being a bill "Approving and confirming contract for apportionment of waters of Ahtanum Creek, Washington, between Yakima Indian Reservation and lands north thereof, dated May 9, 1908."

11-99. A letter dated March 4, 1932, from the Secretary of the Ahtanum Indian Water Users Association to the Commissioner of Indian Affairs, transmitting a copy of a newspaper report in regard to the dispute over the rights to the use of water from Ahtanum Creek, and in which it is stated that Senator Jones will be asked to seek ratification by Congress of the agreement of 1908.

11-100. Copy of a letter dated March 22, 1932, from the Secretary of the Interior reporting on H. R. 10351 a bill approving and confirming the contract of May 9, 1908, in which letter the Secretary of the Interior stated he had no objection to ratification by Congress of the agreement in question. Withdrawn.

11-101. A copy of a memorandum dated March 22, 1932 from the Commissioner of Indian Affairs to the Secretary of the Interior, requesting that the Department of the Interior report unfavorably to H. R. 10351, 72nd Congress, 1st Session.

11-102. A copy of a letter dated March 23, 1932, from the Secretary of the Interior to the Chairman of the Committee on Indian Affairs, United States Senate, regarding S. 3998, companion bill of H. R. 10351, both of which were introduced for the purpose of having Congress approve and confirm the agreement of May 9, 1908. In that letter, as in the

correspondence regarding the legislation in the House, the Secretary of the Interior stated that he would have no objection to the ratification by Congress of the agreement. Withdrawn.

11-103. Letter dated March 30, 1932, from John H. Lynch, Secretary of Ahtanum Irrigation District, to the Commissioner of Indian Affairs, transmitting to him copies of two resolutions adopted by the Ahtanum Irrigation District on February 29, 1932, one requesting that the State Supervisor of Hydraulics be requested to divide Ahtanum Creek strictly in accordance with the agreement of May 9, 1908; the other recommending Congressional relief without regard to the attitude of the Office of Indian Affairs or the Secretary of the Interior.

11-104. A telegram dated April 19, 1932, from the President of the Yakima Indian Water Users Association to the Secretary of the Interior charging that the agreement of May 9, 1908, was based on political expediency without consideration of justice for the Indians and stating that if the proposed bill were ratified that the Indians would seek reimbursement from the United States.

11-105. A memorandum designated "Memorandum on Reasons Why the Bill to Ratify the 1908 Agreement of the Ahtanum Creek Should be Defeated," signed by Nealy N. Olney for Ahtanum Creek Indian Water Users Association, and setting forth the position of the Indians in regard to the illegality of the agreement of May 9, 1908.

11-106. A letter dated May 31, 1932, for the Attorney General from the Ahtanum Indian Water Users Association, pointing out that the temporary agreement for the year 1932 had been repudiated by the white water users and requesting that the United States Attorney be instructed to proceed promptly



to institute litigation to settle the conflict over rights to the use of water from Ahtanum Creek.

11-107. A letter dated January 11, 1933, from the Secretary of the Ahtanum Indian Water Association requesting the aid of the Secretary of the Interior in securing a more equitable apportionment for the Indians of the water from Ahtanum Creek.

11-108. A letter dated July 31, 1933, from the Secretary of the Indian Irrigation Association, (Ahtanum) to the Commissioner of Indian Affairs, referring to the blocking of the ratification of the agreement of 1908, and requesting that the Commissioner of Indian Affairs take steps to secure a more satisfactory settlement for the Indians as to water from Ahtanum Creek.

11-109. A letter dated October 2, 1933, from Harold L. Ickes, Secretary of Interior, to the Attorney General, requesting that appropriate instructions be given to the United States Attorney to proceed with a suit to settle the conflict over rights to the use of water from Ahtanum Creek.

11-110. A letter dated January 11, 1934, from Roy C. Fox, United States Attorney to the Attorney General reporting efforts to settle amicably the conflict between the Yakima Indians and the white water users over rights to the use of water from Ahtanum Creek.

11-111. A letter dated January 18, 1934, from Senator C. C. Dill to the Commissioner of Indian Affairs, stating that he hoped it would be possible to call off the proposed suit to adjudicate rights to the use of water and transmitting a copy of a letter dated January 13, 1934 from John Lynch, Secretary of the Ahtanum Irrigation District to Senator Dill and a copy of a letter dated January 11, 1934 from United States Attorney Fox to Mr. Lynch.



11-112. A letter dated September 29, 1936 from J. M. Simpson, United States Attorney to the Attorney General, transmitting a copy of a letter dated October 1, 1936, to Mr. Simpson, from John H. Lynch, Secretary of the Ahtanum Irrigation District. In that letter Mr. Lynch outlined in detail the history of the conflict between the Yakima Indians and the white water users over rights to the use of water from Ahtanum Creek.

11-113. A letter dated October 1, 1936 [see No. 112 above] from John H. Lynch, Secretary of Ahtanum Irrigation District, to J. M. Simpson, United States Attorney, outlining in detail the history of the conflict between the Yakima Indians and the white water users over rights to the use of water from Ahtanum Creek, together with copies of the exhibits "A" through "M" listed therein.

11-114. A letter dated June 28, 1938, from Sam M. Driver, United States Attorney, to the Attorney General urging the issuance of authority so that the suit to adjudicate rights to the use of water from Ahtanum Creek could be instituted.

11-115. A letter dated August 11, 1938 from Sam M. Driver, United States Attorney to the Attorney General respecting the drafting of a complaint in connection with the conflict between the Yakima Indians and the white water users over the rights to the use of water from Ahtanum Creek.

11-116. A letter dated August 15, 1938, from M. A. Johnson, Superintendent of Yakima Indian Agency to Commissioner of Indian Affairs urging that the suit to adjudicate rights to the use of water of Ahtanum Creek be initiated.

11-117. A letter dated September 24, 1938 from Sam M. Driver, United States Attorney, to the Attorney General submitting proposed complaint to be

filed in the case respecting the conflict over rights to the use of water from Ahtanum Creek.

11-118. A letter dated February 13, 1939, from M. A. Johnson, Superintendent of Yakima Indian Agency to the Commissioner of Indian Affairs, urging the institution of a suit to adjudicate rights to the use of water from Ahtanum Creek.

11-119. A copy of a letter dated May 17, 1939, to Senators Schwellenbach and Bone, Senate Office Building, Olympia, Washington, from John H. Lynch, urging them to take steps to prevent the institution of a suit to adjudicate rights to the use of water from Ahtanum Creek.

11-120. A letter dated May 22, 1939 from Senator Homer T. Bone to the Attorney General, transmitting a copy of a letter dated May 17, 1939 from John H. Lynch, Secretary of the Ahtanum Irrigation District to Senators Schwellenbach and Bone, and a copy of a letter dated January 29, 1908 from the Secretary of the Interior to H. J. Snively respecting the conflict between the Yakima Indians and the white water users over rights to the use of water from Ahtanum Creek.

11-121. A letter dated June 2, 1939 from M. A. Johnson, Superintendent of the Yakima Indian Agency, to the Commissioner of Indian Affairs, transmitting a newspaper clipping from the Yakima Morning Herald of June 2 concerning the proposed suit for the adjudication of the rights to the use of water from Ahtanum Creek, and urging that the suit be instituted in the near future.

11-122. A letter dated June 19, 1939 from Norman M. Littell, Assistant Attorney General, to the Assistant Secretary of the Interior stating that the United States Attorney in Spokane was being authorized to

file a complaint to adjudicate rights to the use of water from Ahtanum Creek.

11-123. A printed copy of S. 2806, 76th Congress, 1st Session, being a bill authorizing the Secretary of the Interior to make a survey of the possible means and feasibility of supplementing the water supply for irrigation of the Ahtanum Creek Valley in the State of Washington.

11-124. A letter dated June 26, 1939 from United States Senator Bone to the Attorney General transmitting original letter dated June 23, 1939 from John H. Lynch, Secretary of the Ahtanum Irrigation District, respecting the conflict between the Yakima Indians and the white water users over the right to the use of water from Ahtanum Creek.

11-125. A letter dated June 29, 1939 from John H. Lynch, Secretary of the Ahtanum Irrigation District to the Assistant Attorney General, transmitting copies of three resolutions adopted by the White water users, the gist of which was that all possible means should be employed to procure the abandonment of a proposed suit to adjudicate rights to the use of water from Ahtanum Creek.

11-126. A letter dated July 1, 1939 from Assistant Attorney General Littell to the Assistant Secretary of the Interior, setting the date for a hearing of the white water users in regard to the institution of a suit to adjudicate the rights to the use of water from Ahtanum Creek.

11-127. A resolution, S. Res. 165, 76th Congress, dated July 18, 1939, requesting the Attorney General to stay proceedings for adjudication of the rights to the use of water available for irrigation of Ahtanum Creek Valley until the Secretary of the Interior has reported on possible means and feasibility of supple-

menting the supply of water for irrigation of the irrigable lands in Ahtanum Valley.

11-128. A letter dated July 18, 1939, from Knute Hill, Congressman from the State of Washington, referring to a conference with representatives of the Department of Justice and members of the Office of Indian Affairs, Judge John H. Lynch, Secretary of the Ahtanum Water Users and himself. Mr. Hill requests the investigation of the Klickitat project and other sources of water to supplement the available supply in the Ahtanum Valley.

11-129. A letter dated July 19, 1939, from John H. Lynch, Secretary of Ahtanum Irrigation District, respecting the bill authorizing a survey of sources of additional water for Ahtanum Valley. Reference is likewise made to the resolution adopted by the Senate, S. Res. 165, requesting the Attorney General to withhold the initiation of action until the investigation has been completed.

11-130. A letter dated July 26, 1939 from John H. Lynch, Secretary of Ahtanum Irrigation District, to Assistant Secretary of the Interior Burlew, enclosing a clipping from the Yakima Herald, of July 26, 1939, reporting on efforts to secure additional water supply in the Ahtanum Valley as a means of settling the dispute between the water users from that source; and a copy of a letter dated July 26, 1939, from Mr. Lynch to the Commissioner of Indian Affairs.

11-131. A letter dated July 26, 1939 to John Collier, Commissioner of Indian Affairs from John H. Lynch, Secretary of Ahtanum Irrigation District, discussing at length the possible solution of the dispute by securing an additional supply of water for Ahtanum Valley from another source, and transmitting a copy of the clipping from the Yakima Herald of July 26, 1939.



11-132. A letter dated August 10, 1939, from John H. Lynch, Secretary of Ahtanum Irrigation District to Secretary of the Interior discussing the possibility of securing a supplemental supply of water for the Yakima Valley, as a means of settling the dispute between white water users and the Indians from Ahtanum Creek.

11-133. A letter dated August 11, 1939, from M. A. Johnson, Superintendent of the Yakima Indian Agency, to Commissioner of Indian Affairs, enclosing a clipping from the Yakima Morning Herald dated August 9, 1939, concerning a proposed survey of the Ahtanum Water situation.

11-134. A letter dated August 25, 1939 from N. W. Irsfeld, Project Engineer, Yakima Indian Reservation, to the Director of Irrigation, U. S. Indian Irrigation Service, reporting in full in regard to the several possible sources of water supply for Ahtanum Valley, and enclosing a copy of a letter dated August 24, 1939 to Mr. Irsfeld from J. S. Moore, Superindendent, Bureau of Reclamation.

11-135. A letter dated September 14, 1939, from John H. Lynch, Secretary of Ahtanum Irrigation District to the Director of Irrigation, U. S. Indian Affairs, in regard to the procurement of a supplemental supply of water to meet the needs of Ahtanum Valley.

11-136. A letter dated September 21, 1939, from N. W. Irsfeld, Project Engineer, Yakima Indian Reservation, to Director of Irrigation, U. S. Indian Irrigation Service, in regard to his earlier report on the possibility of securing a supplemental supply of water.

11-137. A letter dated September 28, 1939, from M. A. Johnson, Superintendent, Yakima Indian Agency, to Commissioner of Indian Affairs, transmitting a copy of the resolution adopted September 27, 1939, by



the Yakima Tribal Council urging immediate institution of a court action, to settle the dispute over rights to the use of water from Ahtanum Creek, and a newspaper clipping.

11-138. A letter dated April 1, 1940 from M. A. Johnson, Superintendent Yakima Indian Agency to Commissioner of Indian Affairs reporting the desire on the part of the Indians to have the suit instituted for the adjudication of rights to the use of water at a very early date and reporting that the Indians contemplate the employment of private attorneys to bring the case in the event that the Attorney General does not start the suit at an early date.

11-139. A copy of Summons and Bill of Complaint filed May 15, 1941, in the District Court of the United States for the Eastern District of Washington, in the case entitled *Frank Totus, et al. v. United States of America*, together with copy of the Order to Dismiss signed by Judge Schwellenbach on December 4, 1941.

11-140. A letter dated June 2, 1942, from M. A. Johnson, Superintendent of Yakima Indian Agency, transmitting a resolution dated May 29, 1942, from the Yakima Tribal Council urging the Secretary of the Interior and the Department of Justice to use every effort to institute a federal action to settle the long-standing dispute between the Indians and white water users from Ahtanum Creek.

11-141. A letter dated July 21, 1942, from Oscar L. Chapman, Assistant Secretary of the Interior, to the Attorney General transmitting a copy of a letter of June 29, 1942, from the Secretary of the Interior to the Vice President of the United States reporting adversely on the proposed project which was investigated, pursuant to Senate Resolution 165, 76th Congress, agreed to July 18, 1939. In that letter the Assistant Secretary of the Interior urged the institu-

tion of the suit to adjudicate rights to the use of water from Ahtanum Creek.

11-142. A letter dated August 17, 1942, from Homer T. Bone, United States Senator, to Secretary of the Interior transmitting a copy of a letter of August 10, 1942, to Senator Bone, from John H. Lynch, Secretary of the Ahtanum Irrigation District. In that letter, Mr. Lynch comments upon the report of the Secretary of the Interior to the Vice President in regard to the lack of feasibility of the Klickitat project.

11-143. A resolution dated October 16, 1942, from the Yakima Tribal Council to the Attorney General requesting the institution of a suit to settle the conflict between the Yakima Indians and the white water users over the rights to the use of water from Ahtanum Creek.

11-144. A letter dated November 9, 1942, from Oscar L. Chapman, Assistant Secretary of the Interior, to the Attorney General commenting on the proposed complaint and requesting that the institution of the adjudication suit to settle the conflict between the Yakima Indians and the white water users over rights to the use of water from Ahtanum Creek be withheld in accordance with Senate Resolution 165—76th Congress; and enclosing a copy of a letter dated October 7, 1942, from N. W. Irsfeld, Senior Engineer, to Acting Director of Irrigation, United States Indian Service.

11-145. A petition of the Yakima Tribe of Indians dated May 8, 1944, to the Secretary of the Interior requesting the Secretary, among other things, to declare null and void the agreement of May 9, 1908, and a statement in support of the petition.

11-146. A resolution dated July 9, 1945, by the Yakima Tribal Council announcing that the finding of additional supply of water from the Klickitat River

would not in any way settle the controversy arising over the unsettled condition of water rights to the Ahtanum Creek and requesting immediate action be taken in regard to the matter.

*Plaintiff's Exhibit 12*

Reserved.

*Plaintiff's Exhibits 13 Through 138*

Reserved.

DEFENDANT'S EXHIBITS

*Defendant's Exhibit 139*

Decree of Superior Court of the State of Washington in and for the County of Yakima, No. 18279, *In the Matter of Determination of Water, The State of Washington v. Annie Wiley Achepohl.*

*Defendant's Exhibit 140*

Copy of the patent to the Bishop of Espanolo, now the Bishop of Seattle.

*Defendant's Exhibit 141*

Title Certificate showing description of patents.

*Defendant's Exhibit 142*

Patent to Stewart.

*Defendant's Exhibit 142-A*

Patent to Southern.

*Defendant's Exhibit 143*

Statement of Lands mortgaged by Federal Land Bank.